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# The American Political Science Review

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# The American Political Science Review

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## FACT AND FICTION IN GOVERNMENT\*

ISIDOR LOEB

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Three decades have elapsed since the first president of the American Political Science Association at its inaugural meeting described the objects and purposes that it should pursue. Some of his successors have discussed various details of this program and others have reviewed the results achieved. Due recognition has been accorded to the significance of historical backgrounds, legal systems, and political theory. In addition, emphasis has been placed upon the importance of an understanding of the government as it actually functions. Hence, much of the work of this Association and its members has been devoted to the investigation and exposition of those customs, procedures, and institutions which, with or without any recognition by constitution or statute, exercise a profound influence over governmental organization and function.

It is natural that during this period significant changes should have appeared in the scope of Political Science and in the character of the techniques employed, with resulting differences in data and conclusions. Increasing evidence has been furnished of the close relation between politics and the other social sciences and the natural sciences. Efforts have been made to utilize the facts and methods in these fields for a better application of government as it is or as it ought to be. Many persons have doubts regarding the contributions that may be made by some of these cognate sciences, but there can be little question regarding the value of a greater utilization of the scientific attitude and of all relevant data in arriving at a better understanding of the actual government of human relations.

\* Presidential address delivered before the American Political Science Association at its twenty-ninth annual meeting, Philadelphia, Pa., December 27-29, 1933.

Governmental affairs have felt the influence of the work of this Association during the past thirty years, but the effect has not corresponded with the great progress and accomplishments of this organization and its members. Of more significance is the fact that even less influence in general has been exercised upon the electorate or its leaders. This is clearly shown when we contrast this result with that achieved by the natural sciences. Today, there is widespread popular acceptance of the application of the principles established by scientific research in dealing with matters of our physical environment. No one today seriously contends that physical problems affecting health and safety, transportation and communication, industry and agriculture, should be solved in accordance with the knowledge of natural phenomena that prevailed in the mediæval world. Superstition and tradition have been displaced by the irresistible evidence of realities.

On the other hand, in political relations, devotion and adherence to principles and institutions that were formulated during by-gone centuries are factors that exercise a profound influence. However overwhelming the evidence that these no longer exist or are inapplicable to present conditions, it is powerless to overcome traditional beliefs based upon the kind of world that is preferred and which, it is hoped, can be maintained. Even when due allowance is made for the greater accuracy of the data secured by research in natural science, it would seem that there must be other reasons to account for the vast differences which are found in the acceptance and application of principles in the two fields.

Students of politics have been influenced by the spirit and have used the methods of natural science in their endeavor to discover truth and reality in government. Aristotle, with whom the science of politics begins, understood and emphasized the importance of a knowledge of the facts of our social as well as of our physical world. Machiavelli was the first man in the Middle Ages who utilized similar methods. While he may have justified falsehood and deception as necessary for the maintenance of despotic power, an end which he believed desirable under the conditions existing in Italy at that time, he used realistic methods in arriving at an understanding of the political conditions of his time.

The theory of the social contract, on the other hand, introduced politics to the realm of fiction and imaginary human beings. The practical results which it secured in the development of limited, rep-

representative government cannot obscure the great influence which it exercised in promoting the acceptance of unrealities in political affairs. While modern political science, in returning to more rational methods, has furnished an antidote to such idealistic theory, the effects of the latter are still manifest.

Despite this prevailing influence, American leaders in the eighteenth century were far more realistic in political affairs than are their modern successors. They clearly recognized the inadequacy of the Articles of Confederation and the ultimate result of continuing their government under that instrument. Notwithstanding the jealousy with which the states regarded their newly found independence and sovereignty, they were willing to face the fact that these could not be preserved if the Union disappeared, and that this was inevitable under the existing arrangement. The framers of the Constitution found a practical solution in providing for a central government with effective powers in matters of common concern while leaving to the states full control over their internal affairs. Their acceptance of current ideas of individualism and natural rights did not represent any departure from a realistic attitude, as these corresponded largely with, and were adapted to, the actual conditions existing in this country at the time. While they were opposed to governmental interference with or regulation of private social or economic relationships, with few exceptions, they did not deem it necessary nor perhaps desirable to impose positive, constitutional restrictions upon such action.

On the other hand, today many citizens believe that the doctrine of *laissez faire* was incorporated into our organic law, and traditions of eighteenth century individualism exercise a powerful influence. Despite the revolutionary changes that have occurred, even within their own experience, many fail to appreciate the truth that in social relationships "all things flow—nothing abides." Their imagination is uncontrolled by the evidence of facts, and their decisions are governed by idealistic elements.

Opinions that are widely prevalent today concerning our Constitution reveal the influence of these unrealities. Some regard this instrument as the result of speculative creation rather than practical adaptation. It is also believed that the Constitution is fixed and immutable and has undergone no changes except those provided by formal amendments. Many are unaware of the influence of economic and technological changes upon political institutions.

Others may be sufficiently naïve to believe that the fathers contemplated and provided for the present exercise of governmental powers. Most of those who insist upon its unchangeable character, however, assert that judicial interpretation has preserved the balance, rejecting those acts that are in conflict and sustaining those that are in accord with the provisions of the Constitution. They fail to perceive that in many cases, during the last three decades, that have been decided by a divided Court, the justices have differed not so much regarding legal principles as concerning the existence and nature of certain facts.

Whether one accepts the theory of judicial interpretation or takes the position that the courts have expanded the Constitution in the exercise of their function of judicial review, another problem in actuality is presented. Politics, like its sister social sciences, has been obliged to recognize that it does not operate in a vacuum. While members of the Supreme Court, though differing in their social and economic views, generally follow accepted legal principles, it is clear that judicial review in some controversies does not function in accordance with prevailing canons of interpretation. In a series of cases involving labor statutes that were decided by a divided court, it was found that some of the members were uniformly in favor of the constitutionality of the acts while others just as consistently held these invalid. It is natural to assume that traditional ideas or other factors influenced the opinions of these judges regarding certain facts and their significance in determining the conformity of legislation to the requirement of due process of law. Hence, there has developed a tendency to subject to minute examination and detailed criticism the previous records of those who are nominated as justices of the Supreme Court. A popular demand has arisen for the consideration of psychological factors as well as personal integrity, legal ability, and judicial training in the selection of members of this tribunal.

Another group rejects all of the foregoing views regarding the Constitution. While admitting that it was suitable for the conditions existing in the eighteenth century, they insist that it is not adapted to the present time, and that many of its fundamental features have been discarded. As they believe that government is being carried on largely in conflict with the Constitution, the demand is voiced for a general revision that will make our organic law conform to modern conditions. While most of those who take

this attitude have been classed as "radicals," their ranks, in view of recent developments, have been augmented by outstanding conservatives. The latter, believing that the Constitution was intended to maintain the individualistic state, insist that it cannot be adapted to a collectivistic society and that this reality should be faced and embodied in a new instrument. The conflict between the advocates of the flexibility of the Constitution and the proponents of its collapse presents a major problem of modern politics.

While the function of judicial review in declaring legislative acts to be in conflict with the Constitution has become more realistic, it is not unaffected with imaginary concepts. It is generally believed that decisions which prevent legislation for which there is a wide popular demand may be properly overcome only by constitutional amendment. There are not wanting examples, however, which indicate that under certain circumstances this result may be accomplished as a result of the clear declaration of legislative policy, accompanied by the influence of changing conditions upon the personnel of the Court. The Legal Tender Cases and the upholding of the Adamson Act, in *Wilson v. New*, illustrate this situation, and similar results may follow in such matters as national child labor legislation and acts dealing with minimum wages and yellow-dog contracts.

The enormous difficulty, under normal conditions, in overcoming traditional forms and procedures in government is well illustrated in the law governing regular sessions of Congress. The absurdity of having the first regular session of a Congress postponed until thirteen months after the election of representatives and the danger involved in having the old Congress legislate for three months after its successor has been chosen were recognized at an early period. Inertia and traditional adherence to established forms, however, were able to prevent a realistic solution for more than a century.

Political parties that have done much to introduce realities in government have themselves suffered from the fictitious influences that affect political institutions. Glittering generalities instead of clear statements regarding real differences usually characterize party platforms. The exception that appeared in the campaign of 1932 emphasizes the general situation. The realignment of voters in parties on the basis of vital issues is prevented, also, by traditions of party regularity.

Adherence to traditional forms and failure to provide for changing conditions find even more striking illustration in state and local government. With inadequate knowledge of history, many existing institutions are erroneously believed to be the product of eighteenth century wisdom. There is a failure to recognize the evil by-products of the democratic revolution of the nineteenth century, and these share in the sanctity that attaches to the fundamental principles of free government. With few exceptions, the states are engaged in the difficult task of meeting the pressing demands created by complex conditions, with legislatures chosen in accord with principles of representation that frequently do not permit a proper expression of the opinion of the majority. The extensive limitations that have been imposed upon legislative power, with resulting decline in the character of representatives and deterioration in leadership, have further complicated the problem.

The question of administration is equally serious. While state action or control has been introduced in many cases to replace or supplement local authority, uniformity and efficiency are frequently lacking. Conflict between agencies is encouraged by the distribution of functions among many organs that are independent of each other and subject to no supervisory authority. Inefficiency is further promoted by the inadequate character of administrative machinery provided and by the persistence of the spoils system in influencing the recruiting of the personnel.

Local government, with exceptions in some cities, furnishes many examples of the prevailing influence of fiction in political affairs. Governmental areas that formerly corresponded with social and economic conditions are still expected to meet the situation brought about by revolutionary changes in transportation and communication. Tradition and sentiment prevent recognition of the fact that political units should bear a close relation to social and economic unity. Similar influences have caused the retention of antiquated governmental machinery for these areas. The cumulative effect of the failure to deal with the realities of this situation is shown in crushing local tax burdens and increased inefficiency in administration.

While examples of the paralyzing influences of tradition in government could be multiplied indefinitely, hopeful signs of a change in attitude are by no means lacking. Recent developments furnish striking evidence of a tendency to apply realistic methods to politi-

cal affairs. The Lame Duck and Prohibition Repeal Amendments, the clearer definitions of political party issues in the campaign of 1932, the revolutionary changes introduced by the New Deal legislation of 1933, and the growing conviction, inspired by the increasing burden of taxation, that something is wrong with local and state governmental organization and administration, are examples. These show a decreasing influence of fictions and subjective impressions and a greater insistence upon facts and objective knowledge in democratic government.

The ideas at the basis of the revolutionary legislation of this year were the result of an analysis of our modern complex and economic life. They were advocated for many years without any apparent hope of successful realization. The special session of Congress, however, passed the measures almost without opposition, even from the minority party. While this was due in part to the overwhelming majority secured by the incoming administration and to the fear complex which affected those who were regarded as responsible for the existing disastrous situation, fundamental changes in public opinion also had important influence.

Many persons who were amazed at this result overlooked the cumulative effect of the efforts of the exponents of the new ideas. They also failed to give sufficient weight to the mass of objective facts that have been brought within the personal experience of individuals during the last two decades. Attention has been focused chiefly upon the economic significance of these changes, but political ideas and institutions also have been profoundly affected. In any event, Political Science has an unusual opportunity to capitalize the educational value of these recent realistic manifestations in social relationships.

It is not essential that one should accept the validity of all of the principles upon which a program such as the New Deal is based, still less that approval should be given to all of the methods by which the aims are sought to be enforced. There are dangers in realism as well as in imaginary concepts. Risks are involved in experimentation with our social world, even when this is based upon data that have been secured by the best available methods. But there is at least the possibility of improvement, if not success, while adherence to traditional ideas based upon imaginary conditions will inevitably lead to failure. Nor is there any occasion for despair over the length of time required for progress to mani-

fest itself. Integrity, courage, and infinite patience are no new qualifications for those who seek to acquire and disseminate knowledge.

The present situation should stimulate the American Political Science Association to continue and expand its activities. Its primary purpose must remain that of the encouragement of the scientific study of Political Science. The promotion of research and the publication of its results will always constitute its greatest contribution. The Sub-Committees on Research and Publication will continue to find ample scope for the promotion of activities in these fields. New interest has been aroused regarding the fundamental features of American government. In his presidential address, last year, Dr. Willoughby voiced the conviction of many that the time has come for a thorough reexamination of these for the purpose of determining their actual operation and the modifications that experience and changed conditions may suggest.

Schools and colleges may be made effective agencies for promoting realistic tendencies in political affairs. This Association has been deeply interested in the problem of improving the teaching of government, and doctrinaire procedure has been modified in favor of more objective methods. Our Sub-Committee on Political Education, in carrying out one of its purposes, has conducted a series of regional round table conferences participated in by educational administrators, high school teachers, and political scientists. Though still in an experimental stage, this method of frank discussion of problems has demonstrated the beneficial results that may be secured from its continued application.

The Association has been able, also, to take advantage of the opportunity afforded for civic education, particularly of adults, by means of radio programs. Without adequate funds, but with the self-sacrificing labor of its chairman, the Committee on Policy has been able to cooperate in presenting the "You and Your Government" series. There is ample evidence of the educational value of these programs. Every effort should be made to provide the facilities necessary to secure the continued gratuitous allotment of valuable time on radio broadcasts for this purpose.

An important feature of the question of improved instruction in government is that of securing better trained teachers. The Sub-Committee on Personnel has contributed to the solution of this problem by a study of the factors involved and by planning

methods for the placement of persons who have been properly qualified in this field. Training for public service also has been studied, and plans for bringing students who have acquired this training into contact with public agencies have been formulated.

Realities in governmental affairs are of the greatest significance to public officials. Hence, another important objective of the Sub-Committee on Political Education has been that of promoting a better understanding and coöperation between these officials and political scientists. State and regional round table conferences have been arranged where small, selected groups of public officers, experts and laymen, meeting privately, have been able to engage in frank discussion of problems of state and local government. Through these there has been secured a better knowledge of political agencies and procedures that may furnish a basis for improvement in areas, organization, and functions.

There have been not only concrete practical results, but also great benefits from personal contact between the groups and the development of mutual respect and appreciation. Politicians have found that the political scientists are not merely theoretical reformers, but are able to submit proposals of practical value. On the other hand, the latter gain a better understanding of political processes, of the attitude of public officials, and of the actual influences affecting them. The uniformly favorable reactions resulting from these conferences indicate that the experiment is one of the most desirable methods by means of which this Association may exert an influence upon governmental affairs and justify every effort to secure the continuation of these discussion groups on a more extended scale.

The dissemination of political facts through these various procedures should never become the primary or most important function of the American Political Science Association. As previously indicated, this will always be that of the encouragement of research. If the data secured and principles developed by investigation could be given practical application, vast improvements in governmental structure and administration would result. Public opinion, however, under the influence of traditional ideals, developed under far different conditions, always lags behind a realistic analysis of the present situation. Nevertheless, experience in many cases has shown that while progress may be almost immeasurably slow, consciousness of realities is ultimately acquired

and this results in surprisingly rapid popular approval of the change. The American Political Science Association has a vital function to perform in these days of quickened interest in public affairs. It is our continuing responsibility to develop the techniques which will be of aid to citizens in distinguishing between fact and fiction in government.

## THE HISTORICAL APPROACH TO THE NEW DEAL\*

CHARLES A. BEARD  
*New Milford, Connecticut*

With astounding profusion, the presses are pouring out books, pamphlets, and articles on the New Deal. Economists, publicists, politicians, statesmen, editors, and prognosticators are "describing," "interpreting," and "forecasting" the outcome and results of the legislative and executive actions coming within the scope of the New Deal since March 4, 1933. This is proper and natural enough. It is inevitable.

But few of the writers guilty of publication have prefaced their reflections with due notice to the readers respecting the assumptions, methods of reasoning, hopes, fears, and desires actuating their thought at the beginning of their thinking about the description, interpretation, and forecasting operations. Most of them, probably, would say that it is academic to stop to think about what one is doing when one begins to think about social phenomena such as are embraced within the field of the New Deal; but the saying would be an escape, a dodge, or a trick. Why? Because nothing can be described in itself. True, a list of congressional acts may be enumerated and quoted in full, but that is not a description of them, save in a wholly arbitrary sense. It would cut off the acts from the circumstances which gave rise to them and help to give meaning to them. Again, the acts of the New Deal cannot be interpreted in themselves. They can be interpreted only in terms of something else, something broader and deeper than the acts in themselves.

Finally, we come to prognostications relative to the "outcome" or "results" of the acts of the New Deal. In any prognostication respecting human affairs, human desires, hopes, and loves become immediately active. What any economist, editor, publicist, or speculator thinks about the outcome of the New Deal will depend in a large measure on his own wishes in the premises. When an astronomer prognosticates that a comet will return at a given time, he is fairly sure of his facts; but when any prognosticator foretells the outcome of the acts of the New Deal, he is more or

\* This brief article, together with that by Dr. Lorwin which follows, may be regarded as in the nature of a prologue to a series in which various authors will during the year interpret fundamental aspects of the New Deal. *Man. Ed.*

less of a guesser in this vale of tears. Besides, what is an "outcome" or a "result?" Is it an outcome or result in 1936, 1950, or the year 2000? And how broad is the picture to be in which the outcome is depicted? Too much speculation along this line would, no doubt, paralyze the hands of busy authors grinding grist for the day's news.

Well, then, what is the purpose of the above excursus? It is a preface to a plea for the historical "approach" to the New Deal. In the minds of many impatient youths busy with "current events," this will excite derision. Is not the historical "approach" just an old almanac view of things? Is not history "bunk," as one of our now financially bewildered manufacturers described it?

The answer of the present writer is that it is *the only approach* open to the human mind. Why? First, the present is only the past, that is, history, becoming. Second, the only things we know come out of the past becoming in the present. Third, we are reasonably sure of many things that have happened, but we are not so sure of many things that will happen in the near and distant future. Fourth, any discussion of any contemporary, up-to-the-minute, issue must be in terms of things known in the past (if only ten minutes past), and the discusser takes a certain time depth for his purpose, unless he writes in terms of pure speculation for an indefinite future. Even then he can speculate only in terms of the things he knows—things that have come out of the past. Even the most severely systematic economist or political scientist, who often has contempt for the dusty historian, really takes a certain time depth in getting his facts and ideas—a minimum time depth for his *purposes*; and he seldom inquires what his purposes are or where he got them. He silently assumes them and begins.

Now for the business in hand—an historical approach to the New Deal. For reasons of time and space, we do not begin with primitive man, but start far this side of him, knowing full well that we make an unwarranted and arbitrary division in ever-flowing time. We are still, all of us, more or less, primitive men—as lynchings illustrate dramatically and Fascism systematically. But let that pass. We start, arbitrarily, with certain historical facts in the background of American history.

There is in America a long democratic tradition, a care for and interest in, the common run of mortals—farmers, laborers, clerks, floor-walkers, professors, instructors, and section hands. This tra-

dition runs counter to the interest in bankers, railroad presidents, wheat kings, copper kings, and plutocrats generally—to whom the "press" makes obeisance and the universities give degrees. The traditional interest in the common run is to be found in Jefferson, Fanny Wright, Emerson, Walt Whitman, Sockless Jerry Simpson, and many others of lesser breed. Students of American history know something about them and about the tradition—not enough, to be sure, but still something.

The next historical fact is that there have been several crises in American history: the Revolution and the war for independence, the formation of the Constitution, the revolution of 1800, the calamity of 1819, the upheaval of 1837, the Civil War, the panic of 1873, the smash of 1893, the Bull Moose surge of 1912, the World War, and so on, with many interludes and side shows.

The third pertinent historical fact is that a crisis breaks in upon the routine of life and is accompanied by thought and action. When all goes well, when there are two cars in every garage, two chickens in every pot, and professors can wear broadcloth and spats, there is not much need for thought, outside of the routine. Acquisition and enjoyment are the order of the day. There is nothing wrong about that. It is as natural as our heritage from primitive man. But when a smash comes, we wake up—if only a little bit—and begin to try to think about how we got into the jam and how we can get out of it. And when we begin to think, we can think only in terms of some tradition, some heritage of ideas and interests.

Thus it has happened that in every economic crisis there has been an upsurge of ideas in the democratic tradition mentioned above. There was such an upsurge in the panic of 1893, to go no farther back into the years. It found expression in the Populist assault on "accumulated wealth." Anyone who wants to discover the progenitors of most "new" thoughts in current politics may find them in the Populist platform of 1896. The upsurge was tumultuous and frightened McKinley, Lodge, Hanna, and Company.

But a diversion was found—an exciting diversion in the "glorious" little Spanish war and the imperialist, white man's burden uproar. During the diversion there was an improvement in business, Populism declined, and dollar diplomacy became triumphant at home and abroad.

Things ran along beautifully for several years, but underground the democratic tradition continued, known mainly to a few curi-

ous intellectuals. Then suddenly came the new upsurge in 1912. Wilson assaulted plutocracy in the best Populist formulations, as anyone can discover by reading his *New Freedom*. Theodore Roosevelt badly damaged President Taft's china shop, and the assembled Christian Soldiers at the Bull Moose convention wrote a platform. If anyone wants a background for the New Deal, let him read that platform from preamble to benediction. And at the same time Eugene V. Debs polled about a million votes. It looked as if something might happen.

Then the World War broke. American capitalists and farmers were both happy for once, selling their commodities to ladies and gentlemen in Europe engaged in burning down their house. What millions and billions circulated around in these United States! What profits and dividends! Why think about anything, except getting and spending?

For the capitalists, the beautiful process went on, save for an interlude about 1920, until 1929. But things were different for the farmers—bearers of the old agrarian tradition. Curious intellectuals amid the urban throngs knew that agriculture was in a bad way, and some of them knew that even when prosperity was filling the heavens with din and color there were a million or two unemployed wretches in town and country. But most of our "big men" and "leaders" reached the conclusion that the nation had at last arrived in the promised land of permanent paradise—attained a permanent high level of prosperity. It seems a bit ironical and funny now, but such was our general mental state.

Then again, as often in history, something unexpected by "gentlemen of position and influence" happened, with the suddenness of a rifle's crack. Adam and Eve were driven out of their paradise, just as they were eating the golden apple. The routine of acquisition and enjoyment was violently disturbed as if by an earthquake, aches and pains were felt in places hitherto calm and placid, and so thought began again. How did we get here, and how can we get out?

And what could we think with? In the main, with the ideas of the democratic tradition—in terms of the Bull Moose platform, the Populist platform, *Democratic Vistas*, Emerson's *Essays*, and other documents inherited from history.

Such is the clue to the historical "approach" to the New Deal. The tradition is being altered, of course, by an influx of ideas im-

ported from the Old World—as it was during the first French Revolution, the upheavals of 1830 and 1848; the labor movements and the imperialist phantasy in the closing years of the nineteenth century. But if history is any guide, there will be an absorption, not a substitution. History does not exactly repeat itself. It moves.

Now let the systematists who think they can “describe,” “interpret,” and “prognosticate” do their best with the New Deal.

## SOCIAL ASPECTS OF THE PLANNING STATE

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We are witnessing today in both Europe and America the breakdown of what may be called the nineteenth-century equilibrium, and at the same time the effort to work out a new equilibrium as a basis of life for the twentieth century. The New Deal is the American phase of this movement. We can understand it better if we view it with the search-light of the movements in other countries, and if we make clear to ourselves what is driving them, how they are being driven, and what problems are in their path.

The key to recent social developments seems to me to lie in the resurgence of the middle classes. This is a development of the last decade or so, and is largely the result of the failure of the two other major social groups—the capitalists and the workers—to give Western society, especially Western European society, leadership and direction. On the one hand, the capitalistic groups, while concentrating industrial and financial resources, showed a sad incapacity to establish a leadership based on social needs and moral values. On the other, the working classes, after having reached a position—not here, but in Western Europe—of great strength and influence, proved unable either to achieve enough numerical or social predominance to assume the hegemony of the state or to impose by force the program of socialism which they had preached for half a century.

It was in this social *impasse* that the transformation in the character of the middle classes showed itself. These classes had already been given their first rude jolt by the World War and its aftermath. They had already been made to realize that they were extremely vulnerable, that they could be wiped out by inflation, expropriated by proletarians, and socially devaluated by everybody. For a while it looked as if they were done for in Germany, Italy, and elsewhere. What seemed to loom up before them was a Hobson's choice of either a proletarian dictatorship after the pattern of Soviet Russia or a super-capitalism based on monopolistic cartels in which also they ultimately would be crushed. It was in reaction to both these alternatives that the middle classes began again to bid for national leadership as they had done during the French Revolution and in the early part of the nineteenth century. They defied with new energy the challenge of the proletariat and the mastery of big capital. This, as I see it, is the essential factor in

the struggle which is now going on in the countries of Europe and also less definitely in America. It is the new dynamic factor which is reshaping the course of the historic process today.

What is the basis for the claim of the middle classes to economic leadership? It is largely and mainly their presumed capacity to serve as the reconcilers of conflicting interests and groups. As against the class struggle of the Marxians, as against the competitive conflicts of capitalism, the spokesmen of the middle classes offer to build up a new social system based upon an organic solidarity in which group inequalities and group interests are happily merged in a higher national purpose. This system is presumably to be a synthesis of the three main developments of modern times—nationality, functional economics, and social welfare—as formulated in their philosophy, which posits the group as the unit of society, regards all occupational activities as an equivalent performance of duty to the state, and extols the state as the reconciler of all group interests.

Herein lies the difference between the proletarian movements of the workers and the new movements of the middle classes. The former emphasize the immediate necessity of class struggle, with the idea of abolishing all classes in the future and of establishing a classless society. The proletarian movements are for a dictatorship and for using the full power of the state now, giving us the promise of a final withering away of the state in the distant future. On the other hand, the spokesmen of the middle classes see in economic groups and social classes a constant element of social life which need not be done away with, and which can serve as a basis for a new state structure.

It is because of this attitude towards social classes and economic reconstruction that the leaders of the new movements are so passionately engrossed in the making of a new state myth. Fundamentally, all their theories hark back to the doctrines which emphasize the supreme value of a powerful national state. The divergence between Italian Fascism and German nationalism is an accident which may disappear in the near future. Italian Fascism sees the state as identical with the nation, evolved historically, regardless of any anthropological or racial antecedents. The German theorists are trying to rebuild the theory of the state upon a doctrine of racial purity, which is anthropologically absurd and historically unsound, and which has its justification only in the temporary

psychopathic state of mind of a people harassed and embittered by fifteen years of post-war diplomacy. But the essential element in both these state theories is the same—emphasis on national solidarity and national power, and in this respect the doctrines run back to older German political theorists as well as to Machiavelli. We in America are particularly free from such dialectics, our theorizing being largely concerned with the relation of government to the control of industry.

The other main ideas in the new theories of the state, which we too are inclined to favor, are, first, functional economic groups as the basis of political organization, and second, social welfare as the purpose of the state. It is the combination of these latter two ideas with the recognition that under modern complex economic conditions the state must take the lead in working out economic programs and new social patterns that brings forth the concept of the planning state. One of the main political trends of the past half-century has been the transformation of the police, or what Lassalle called the "night watchman," state into the social service state. The transformation which is proceeding now may be regarded as a continuation of that process, though far more thorough-going. For in its effort to assume an active, even a leading, part in economic life, the planning state must tend to be regulative in method, experimental in attitude, and reconstructive in purpose. That it is tending to be such is clear from even a cursory examination of what is happening today in Western Europe and in America.

It is obvious that as a result of these tendencies, the evolving planning state must be very different from the liberal state of the nineteenth century. To begin with, it is different in scope. The liberal state of the nineteenth century was concerned mainly with the maintenance of law and order and with national defense. Its economic activities were limited and small. Even when it began to assume some of the functions of social service, it proceeded deliberately and slowly in order not too greatly to disturb basic industrial relations. It could thus maintain a certain calm rationality, a high respect for legal and constitutional forms, and have patience with the methods of parliamentary procedure, which quite often were wasteful.

The planning state, on the contrary, is concerned primarily with economic and social matters. Because of that, it must make

decisions quickly, and act even more quickly. Its desire to maintain national unity above everything else and to develop national resources makes it eager to prevent strife and ruthless with regard to individual and minority expression. In brief, as it is being developed in Europe, the planning state places national ends above individual and group interests, balanced order above abstract liberty, invention above tradition, and practical necessities above constitutional guarantees. And because of these characteristics, the new state tends to be executive in form, administrative rather than parliamentary, and indifferent to the division of powers honored since the days of Montesquieu. It also tends to develop a whole series of mixed politico-economic forms—governmental proprietary corporations—which tie the state into the economic structure of the country.

The new state involves also a change in the relation of the political party to government. In the thinking of the nationalistic state planners, the party is not the expression of class or group interests, nor a special instrument in the hands of professionals who make politics their main business in life. It is a select minority of men and women who have appointed themselves guides of national destiny and the exclusive exponents of national creeds and ideals, and who claim the monopolistic privilege of exercising political power.

All, I think, will agree that the new social movements which I have been describing raise many disturbing issues and grave doubts. They are certainly not reassuring in their attitudes toward some of our permanent human values. They are too impatient with the idea of freedom and personality. Being intent upon the development of the group and upon the coördination of group relations, they seem to regard the individual as merely a summation of the group relations in which he participates. This results in a disregard for those opportunities and immunities which we have long associated with the idea of individuality, and which demand more careful consideration than they are being given. There is also the danger of bureaucratic arrogance and administrative arbitrariness.

But, above all, there is the fundamental question of the capacity of the middle classes to build up a new equilibrium with proper regard for the interests of the masses of the people. This question arises from the peculiar characteristics of the middle classes due to their intermediate position between big business and the workers. The middle classes contain many indeterminate and weak ele-

ments whose economic position has always been more or less precarious and dependent, and who have neither courage, capacity, nor the experience to control and direct the complex industrial machine of today.

There seem to be two alternatives in the situation. Either the middle classes must allow the industrialists to continue to operate industry or they must take over the industries themselves and operate them under new forms of social management. It is a curious commentary on the character of the middle classes throughout the Western world that this second alternative does not seem to make the appeal to them that might have been expected. For undoubtedly under a régime of collective management and operation the various middle-class groups would become the dominant economic element in the state and would exercise unprecedented power. It cannot be said that for the first time in history we have a group that refuses or does not wish to hold economic power. What seems to be the explanation is that the new middle classes are conscious of the extreme difficulties of economic guidance which have been demonstrated by the experience of post-war Europe and Soviet Russia. It is clear to them that any attempt to force the industrialists out of power means a social struggle of such profound and violent character as to jeopardize their entire enterprise.

As a result, there is a tendency on the part of the middle-class insurgents to reconcile the large industrialists and to keep the working classes in line. This is illustrated by the history of Fascism in Italy and by developments in Hitlerite Germany. The economic reconstruction of the corporative and totalitarian states has not dislodged the power of the industrial and financial groups, nor has it enhanced the bargaining position of the large masses of workers. On the contrary, the tendency is to shift the balance of groups in such a way as to make the masses of the people more dependent on the intervention of the new state for power to deal with the owners and directors of industry. If this tendency continues, Fascism, Hitlerism, and other forms of middle-class economic nationalism will become an alliance between big business, which will keep economic power, and the middle classes, which will become the monopolists of political position and power. Under such conditions, it is hard to see how the middle class movement will be able to bring about its ideal of a balanced state.

The intermediate position of the middle classes gives rise to

another serious obstacle in the way of economic reconstruction. Many groups within the middle classes, such as shopkeepers, artisans, and small business people, are intent upon maintaining the economic basis of their status. But this can be accomplished largely, if not entirely, by breaking up to a considerable degree the mass character of modern industry and by blocking the further march of the machine. In some measure, this might be desirable. But carried beyond reasonable limits, it might mean the undermining of the foundations of material welfare. It is already a source of much confusion in the economic programs of the nationalistic planners in Germany and elsewhere, who are trying in vain to balance the monopolistic propensities of big industry, the collectivist ideas of working-class groups, with middle-class strivings for independent but governmentally protected small economic enterprise.

If these difficulties in the way of economic reconstruction are not overcome, the new planning states will have to use more and more force in holding power. It would mean also more devices for diverting attention from real economic and social needs to artificially stimulated tasks. It would mean, further, the accentuation of the excrescences of nationalistic ballyhoo, racial extravagance, and militaristic fanfare.

The middle-class nationalists must thus make up their minds as to which way they are going, and with whom. For if they decide to throw more weight upon the side of the working population, they must drive deeper into the control of industry and the methods of regulating the distribution of the national income. That would mean an increase in governmental planning, which in turn would call for the building up of a new class of civil servants capable of developing a deep sense of professionalism, of completely identifying themselves with the national interest, and of acquiring expertness in industrial management and public administration.

In the foregoing analysis, I have had in mind some of the common elements in all of the new movements toward a planning state, but my thought has been largely on the countries of Western Europe. There are basic differences between the New Deal in America and the social movements of Western Europe. The peculiar features of our New Deal are its greater flexibility, its spirit of tolerance, its respect for individual and group rights, and the effort at voluntary action. The reasons for these features are the

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vague demarcations between economic groups and classes which have been the foundation of our democratic traditions, the faith in the dynamic possibilities of our industries, the survival of frontier mental attitudes, the large sectional differences, and our easy-going attitude towards social doctrines and theories.

The question is: Will these special American characteristics continue? One cannot close one's eyes to the fact that some of the processes and mechanisms of the New Deal tend to draw the lines more sharply between groups and classes. There is danger that the New Deal may be used by special interests for their exclusive benefit.

However, for the time being we are still moving in an atmosphere of indefinite groupings, of blurred party lines, and of an intellectual alignment which runs from "modern Tories" to "young liberals." Government functions under the New Deal are exercised in considerable measure by groups of technicians with a large social outlook bent on achieving what President Roosevelt has called a "true concert of interests." We may regard ourselves as fortunate that this is so, and that we can proceed in the free and flexible manner in which we have proceeded. We can go on applying executive and administrative forms of government without violating constitutional forms and congressional procedures. We can allow the continuation of the party system without jeopardizing the program of reconstruction. We can form and reform our political lines without much concern about their economic and social backgrounds.

If we succeed in keeping our special characteristics, we may blaze another new trail in history. We shall then succeed in creating a composite leadership which, to use Lincoln's term, will become one with the "plain people." This is one of the major social questions ahead of us: Can the "plain people" of America, with the aid of socially-minded experts and leaders, build up planfully and peacefully a new economic and political equilibrium based not upon concepts of totalitarianism or corporatism, but on broad and flexible principles which aim to reconcile pragmatically popular control with governmental leadership, individual efficiency with group responsibility, economic security with orderly change, and social solidarity with a realistic freedom? Upon the answer to this question depends the nature of the planning state toward which we ourselves seem to be on the way.

## POWERS AND FUNCTIONS OF THE JAPANESE DIET, II\*

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### VI. FINANCIAL POWERS: SUPPLY

The principle of "no taxation without representation," so dearly prized in European constitutional systems, finds its counterpart in the Japanese régime. In the ornate language of Prince Ito: "It is one of the most beautiful features of constitutional government and a direct safeguard to the happiness of the subjects that the consent of the Diet is required for the imposition of a new tax and that such matters are not left to the arbitrary action of the Government."<sup>37</sup> The enactment of this rule, so far as the Japanese constitution is concerned, is found in Article LXII, which reads:

The imposition of a new tax or the modification of the rates [of an existing one] shall be determined by law. However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause. The raising of national loans with the contracting of other liabilities to the charge of the national treasury, except those that are provided in the budget, shall require the consent of the Imperial Diet.

In their commentaries on this article, the jurists of the new school emphasize the requirement of the consent (*kyosan*) of the Diet for taxation, while the jurists of the old school emphasize the duty of the subject to submit to taxation. Minobe says: "The tenet that taxation must be levied only with the participation and consent of the Diet, and not through the arbitrary will of the ministry, is a corollary of the principle of government by law."<sup>38</sup> On the other hand, Hozumi declares: "The Japanese constitution does not admit the doctrine that national expenditure is dependent upon the freely granted contribution of citizens. The constitution clearly shows that citizens have a duty to submit to taxation as well as to conscription. Taxation is the result of law and not of the consent of the Diet rendered from year to year."<sup>39</sup> Thus, according to Hozumi, it is the Government that determines the income and expenditure for the year. And, if the Government neglects to prepare the financial measures, the Diet itself has no power to prepare and vote them.

\* The first instalment of this article appeared in the December issue.

<sup>37</sup> *Commentaries* (1889), pp. 113-114.

<sup>38</sup> *Kempo Seigi* (1931), p. 621.

<sup>39</sup> *Kempo Teijo* (1910), pp. 873-874.

Taxation is indeed, in Japan, the result of law. A certain permanency attaches to the vote of taxes—a permanency that is foreign to Anglo-Saxon systems. A yearly settlement of tax rates is not required. Most jurists agree that the *kyosan* of the Diet, when voting for a tax levy, is not to be considered as a consent limited to one year's duration. The requirement of annual consent of parliament to taxation as found in England has no place in the constitution of 1889. Thus a tax once voted assumes an indefinite existence. This feature of public finance in Japan will again engage our attention when we investigate budgetary procedure.

The exemption of "administrative fees or other revenue having the nature of compensation" from the general principle of parliamentary consent to taxation was the deliberate decision of the statesmen of the Meiji era. As Prince Ito well said, administrative fees having the nature of compensation, and being collected from persons in return for special services rendered to them by the government at their request or for their benefit, are in their nature far different from taxes which are imposed as a common duty to be discharged by all inhabitants.<sup>40</sup> In a country where state socialism was being so rapidly developed as in Japan, where the government was already engaged in operating railways and steamship lines, post offices and telegraphs, and many other public utilities—in such a country there was grave political danger in giving into the hands of the national legislature the control of the rates charged by public monopolies.

Two classes of fees are generally recognized as exempt from the requirement of consent by the Diet.<sup>41</sup> The first includes all payments which depend upon the will of the payee because contracted by his voluntary use of the special services provided by the state, such as railways, the post office, telegraphs, and telephones. The second category includes payments required in return for the exercise on behalf of the payee of powers constitutionally administered by ordinance. This group includes fees for passports, police permits, and civil service examinations.

The constitutional issue over administrative fees was raised at an early date. What is an administrative fee? Does the Diet or the Government have the right of definition? In 1892, the home office promulgated an ordinance revising the regulations regarding

<sup>40</sup> *Commentaries* (1889), p. 114.

<sup>41</sup> Compare Minobe, *Kempo Seigi* (1931), pp. 630-637.

the hunting of game and imposed a new license fee. The House of Representatives objected to the ordinance as levying a tax without the Diet's consent.<sup>42</sup> The Government replied that it was an administrative fee. Thereupon the House passed a bill of identical content in order to force the constitutional question.<sup>43</sup> In sympathy with the bureaucratic tendencies of the Government, the House of Peers refused to concur in the bill. Two years later, the Peers changed their mind and passed a similar measure.<sup>44</sup> Victory thus fell to the Diet. But it was a barren victory. The definition applied to administrative fees has always been liberal, with the result that today almost a third of the ordinary revenue comes under this head, and consequently is beyond the control of the Diet.

#### VII. FINANCIAL POWERS: THE BUDGET

Long before the Restoration in Japan, European states had developed the budget as an admirable instrument of public finance. The Meiji statesmen learned much from a study of the models of Germany, England, and France. In its main outlines, the Japanese budget follows its European prototypes. Accordingly, the constitution provides:

Article LXIV. The expenditure and revenue of the state require the consent of the Imperial Diet by means of an annual budget. Any and all expenditures overpassing the appropriations set forth in the titles and paragraphs of the budget, or that are not provided for in the budget, shall subsequently require the approbation of the Imperial Diet.

Article LXV. The budget shall be first laid before the House of Representatives.

The budget is drafted by the minister of finance in consultation with his colleagues in much the same way as the budget is prepared in Germany and England. Rules governing the procedure and form of drafting are prescribed in the *Kaikeiho*, or Law of Finance.<sup>45</sup>

<sup>42</sup> The resolution taking exception to Imperial Ordinance No. 84 of 1892 was passed in the House of Representatives on December 13, 1892, by a vote of 174 to 73. *Dai Nippon Teikoku Gikai-shi*, Vol. II, p. 524. Compare Takeshige Kudo, *Teikoku Gikai-shi*, or "History of the Imperial Diet" (Tokyo, 1901-1903), Vol. I, pp. 242-244.

<sup>43</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. II, p. 947 (Feb. 18, 1893).

<sup>44</sup> The first bill was rejected in the House of Peers in 1893 by a vote of 89 to 88. In 1895, an identical bill secured a passing vote. *Ibid.*, Vol. III, pp. 196, 756 (Feb. 22, 1895).

<sup>45</sup> *Genko Horei Shuran* (1927), Vol. II, bk. xii, pp. 1-2. Upon procedure in budget-making, see R. Uchiike and Y. Sakamoto, "Budget System of Japan," in *Municipal Research* (New York), March, 1927, No. 83, pp. 1-44. The fiscal year in Japan begins on April 1.

In some countries, the budget is treated as a law. Not so in Japan. In the terms of Prince Ito, "the budget is a sort of gauge to be observed by the administrative officials for a current year."<sup>46</sup> Thus, in voting a budget, the Diet exercises a supervisory power over the administration, and not a legislative power. This is a matter of profound importance. The statesmen of the Meiji era imported the German rule that the budget is subordinate to law, that it is only a *Verordnung*, an ordinance or administrative program for the year, rather than a *Gesetz*. Thus, while a law is the common will of the executive and the legislature, and while it cannot be altered by the single will of the executive, the expenditures required for the execution of laws are not subject to the action of the legislative body.<sup>47</sup> In accordance with this principle, Article LXVII of the Japanese constitution provides among other things that expenditures arising from the effect of law or from the legal obligations of the Government cannot be reduced or rejected by the Diet without the concurrence of the Government.

As in all bicameral legislatures, the budget is first introduced in the House of Representatives—the branch closest to the people.<sup>48</sup> At the same time, the ministry of finance furnishes every member of both houses with a copy of what is called the *Teikoku Yosan Koyo*, or "Synopsis of the Imperial Budget." In either house, when the budget is under consideration, it is immediately referred to the budget committee, while sub-committees take up the various sections. Ministers and bureau chiefs attend the meetings. Interpellations are numerous. Under the rules of both houses, the budget must be reported by the committee within twenty-one days. In the committees, the budget is considered section by section and finally voted upon *in toto*. In the houses, for lack of time, the consideration of sections is often abridged. The practice of considering the budget by sections is criticized by Hozumi as uncon-

<sup>46</sup> *Commentaries* (1889), p. 121.

<sup>47</sup> Hozumi, *Kempo Teiyo* (1910), Vol. II, pp. 502-509; Uyesugi, *Kempo Jutsugi* (1927), pp. 537-541; Minobe, *Kempo Seigi* (1931), pp. 680-685, and his *Kempo Satsuyo* (1932), pp. 595-598.

<sup>48</sup> Constitution, Art. LXV, and *Giin-ho*, or Law of the Houses, Art. LIII. See also the *Kizoku-in Teirei*, or Standing Orders of the House of Peers, ch. v, and the *Shugi-in Teirei*, or Standing Orders of the House of Representatives, ch. vi. An English translation of the Standing Orders of both chambers as existing in the year 1905 is found in *A Guide to the Imperial Japanese Diet* (Compiled by Kinroku Fuji; published by the Eikoku Shogyo Zasshi Sha, or British Commercial Magazine Office, Tokyo, 1905).

stitutional, while Minobe, who consistently defends practices that make for parliamentary control, finds authorization for this procedure in the reference to "titles and paragraphs" in Article LXIV.<sup>49</sup>

Save for the constitutional right of the lower house to receive the budget first, the two chambers have equal financial powers. Well aware of the superiority of the British House of Commons to the House of Lords, parties in the Japanese popular house have attempted to assert a similar ascendancy. In 1892, when the House of Peers restored in the budget an item for an earthquake investigation bureau which the House of Representatives had stricken out, the lower house refused to receive the amended budget for consideration.<sup>50</sup> At this *impasse*, the Peers voted an address to the Throne for an interpretation of the constitution, and, upon the advice of the Privy Council, the Emperor issued an edict pronouncing the two houses co-equal in power in all matters of legislation and supervision.<sup>51</sup> Thus, there is now no question as to the constitutional authority of the upper chamber to amend the budget or any money bill—a situation not viewed with equanimity by many liberals and radicals, who do not hesitate to offer proposals for constitutional reforms reducing the rôle of the Peers to that of the British upper chamber.

The rejection of the budget by the Diet is branded as unconstitutional by Hozumi and the jurists of the old school who seek to minimize the parliamentary character of the national legislature.<sup>52</sup> But even the House of Peers, the constant supporter of bureaucratic government, has not hesitated to reject the budget of a cabinet which it dislikes. The first occasion, in 1901, was the result more of the Peers' condemnation of Prince Ito (who had made a startling venture in politics by organizing the Seiyukai as a new party in the House) than of any disagreement over items in the budget.<sup>53</sup> To the consternation of the Peers, an imperial rescript was issued requesting their assent to the budget.<sup>54</sup> Consent was

<sup>49</sup> Hozumi, *Kempo Teiyo* (1910), Vol. II, pp. 521–522; Minobe, *Kempo Seigi* (1931), p. 658.

<sup>50</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. I, pp. 2185 (June 10, 1892). Compare Kudo, *Teikoku Gikai-shi* (1901–1903), Vol. I, pp. 152–158.

<sup>51</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. I, pp. 1743–1750 (June 11–13, 1892).

<sup>52</sup> Hozumi, *Kempo Teiyo* (1910), Vol. II, p. 223.

<sup>53</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. V, p. 861.

<sup>54</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. V, p. 877 (March 13, 1901). See also Kudo, *Teikoku Gikai-shi* (1901–1903), Vol. II, pp. 101–103.

thereupon given, although the Peers expressed their dissatisfaction with Ito by passing *nemine contradicente* all Government bills during the remainder of the session.

Amendments unacceptable to the Government may be as fatal to the budget as total rejection. The amendments of the House of Representatives in 1893 reducing ordinary expenditures by five million yen and eliminating an item of 3,330,000 yen for battleships from extraordinary expenditures was treated by the Government as a rejection, and led the Ito ministry to resort to the well known rescript of February 10, wherein the Emperor offered a contribution of ten per cent from the civil list for six years toward the naval fund and enjoined the Diet and the cabinet to work together in harmony.<sup>55</sup> In 1914, after the exposé of the shipbuilding scandals, the reduction of the naval appropriations by 30 million yen in the House of Representatives and by 70 million in the House of Peers had the effect of a rejection of the budget, and, despite the prorogation of the House, contributed to the fall of the Yamamoto cabinet.<sup>56</sup>

Sometimes the houses have conditionally accepted items in the budget. For instance, in 1928, the House of Peers, in approving the supplementary budget for 1928-29, attached an expression of opinion to the appropriation for the Shantung expedition which read:

Notwithstanding the fact that a military force was sent for the purpose of protecting the Japanese residents in Shantung, there have occurred murders and looting at Tsinan, of which Japanese residents were victims. This is profoundly regrettable. In giving consent to the appropriation for the Shantung expedition, the House of Peers expresses definitely the hope that the Government will not fail in the future to render adequate protection to the Japanese residents.<sup>57</sup>

Such conditions have, of course, more of the nature of a *representation* than of a binding condition upon the use of the appropriation.

The Diet's control of the budget is limited by a surprisingly extensive list of items exempt from legislative supervision. Some of these excepted items are indicated as follows:

<sup>55</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. II, pp. 590-591, 746-758 (Dec. 19, 1892, and Feb. 10, 1893). For Ito's part in this episode, Kudo heaps fiery words of condemnation on the premier. See his *Meiji Kensei-shi*, or "History of Constitutional Government in the Meiji Era" (Tokyo, 1914-1922), Vol. I, pp. 420-421.

<sup>56</sup> *Dai Nippon Teikoku Gikai-shi*, Vol. IX, pp. 104-129, 210-212 (March 13 and 23, 1914).

<sup>57</sup> *Kwampo gogai*, May 7, 1928, p. 614.

Article LXVI. The expenditures of the Imperial House shall be defrayed every year out of the national treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article LXVII. Those already fixed expenditures based by the constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

The first category comprises the *koshitsu-hi*, or imperial civil list. Neither the Diet nor the Government may propose to reduce the expenditures for the Imperial Household as fixed when the constitution was promulgated.<sup>58</sup> Any increase, however, entails the consent of the Diet, inasmuch as taxation may be necessary. In 1910, the imperial civil list, which for years had been fixed at three million yen yearly, was increased with the approval of the Diet to four and a half million yen. Almost unbounded loyalty to the Throne would probably lead to the approval of still larger increases if requested. But the imperial family has an ample income from vast estates, and shrewd politics dictates the placing of no undue strain upon the popularity of the Throne. The officials of the Imperial Household make no accounting of the civil list to the Diet. The item is carried in the budget for the purpose of presenting a complete picture of national finance.

The second category of excepted items includes "those already fixed expenditures based by the constitution upon the powers appertaining to the Emperor." Such expenditures, as Prince Ito pointed out, embrace all appropriations depending upon the prerogative of the Emperor as set forth in chapter one of the constitution, to wit: ordinary expenditures required by various branches of the administration, the army and navy, the salaries of all civil and military officers, and expenditures required for the execution of treaties. Under this rule, based upon the German practice regarding funds once established, the Diet is powerless to withdraw appropriations once voted for the administration of any ministry.<sup>59</sup> The underlying theory is that the Diet cannot suspend or repeal existing laws simply by a refusal to vote the monies

<sup>58</sup> Compare Shimizu, *Kempo Hen* (1923), p. 334; Ichimura, *Teikoku Kempo Ron* (1926), p. 946.

<sup>59</sup> Concerning the German theory of obligatory expenditures, see Paul Laband, *Das Staatsrecht des deutschen Reiches* (4th ed., Tübingen, 1901), Vol. IV, pp. 489-490.

required for their execution. On the other hand, the Diet is not restrained, as Prince Ito admitted, from deliberating upon appropriations required by new ordinances even though based upon the Emperor's prerogative. Thus, appropriations for a newly created ministry or for increase of salaries of administrative officers may be disapproved, but once the Diet has given its consent to these items, it can never reduce or reject them without the assent of the executive.<sup>60</sup>

The third category involves "such expenditures as may have arisen by the effect of law." Here again the German rule of the superiority of law over the budget prevails, giving these expenditures a permanent character. Items in this category include pensions, prisons, tax-collections, and the expenses of judicial courts and the Board of Audit. They are somewhat similar to the items of the second group, but they have their foundation in statutes rather than administrative ordinances.<sup>61</sup> The fourth category includes expenditures relating to the legal obligations of the government, including interest on the national debt, redemption of the debt, subsidies to companies, civil obligations of the government, and funds to maintain Shinto temples.

*Continuing expenditures* form a considerable part of the budget. While the expenses of the state are ordinarily voted annually, sound finance may dictate resort to a long-time financial program, particularly in connection with the building of fortifications and battleships, engineering projects, and all kinds of public works that require several years for completion. Under Article LXVIII, the Government may ask the consent of the Diet for the amounts to be paid into a Continuing Expenditure Fund for a fixed number of years. Again, the statesmen who drafted the constitution assumed that no budgetary officer ever made a perfect budget, much less a legislature. Errors and unforeseen requirements are inevitable. Hence, by virtue of Article LXIX, the Government is entitled to a Reserve Fund in order to meet unavoidable deficiencies.

At what stage of the budgetary procedure should the houses seek the consent of the Government to an amendment of any of

<sup>60</sup> Compare Minobe, *Kempo Seigi* (1931), pp. 642-676; Shimizu, *Kempo Hen* (1923), pp. 1412-1416.

<sup>61</sup> Compare Uyesugi, *Kempo Jutsugi* (1927), p. 555; Shimizu, *Kempo Hen* (1923), pp. 1414-1415.

the reserved items? The question is difficult to answer, in view of the fact that the Diet does not actually act as a single body. The present practice is for each house independently through its president to request the Government's approval of such amendments prior to the final vote.<sup>62</sup>

### VIII. EMERGENCY FINANCIAL ORDINANCES

In time of national peril, when the Diet cannot be assembled, the Government has power to employ an extraordinary device, namely the *zaisei-teki kinkyu meirei*, or emergency financial ordinance. This is the counterpart of the emergency ordinance defined in the eighth article of the constitution. As to the emergency financial ordinance, the fundamental law provides:

Article LXX. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an imperial ordinance. In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

The emergency financial ordinance does not escape the Japanese distinction between law and the budget. The ordinance defined in Article VIII determines *hoki*, or rules, and takes the place of law. But the ordinance defined in Article LXX is only an order to take measures (*shobun*).<sup>63</sup> The one sets up a rule, the other, a program. The *kinkyu meirei* becomes inoperative in case of parliamentary disapproval, whereas it is generally conceded that parliamentary disapproval has no effect upon the measures taken under the *zaisei-teki kinkyu meirei*.

The *zaisei-teki kinkyu meirei* has seldom been employed, for rare indeed is the occasion when with truth it can be said that the convoking of the Diet is an impossibility. The earthquake of 1923 brought a situation of this kind, and the cabinet immediately resorted to an emergency financial ordinance. Less convincing, however, was the assertion of the Wakatsuki ministry in 1927 that the

<sup>62</sup> For criticisms of this procedure, see Shimizu, *Kempo Hen* (1923), pp. 1421-1422. Compare the debate in the House of Peers in 1891, in the *Dai Nippon Teikoku Gikai-shi*, Vol. I, pp. 326-330. For an English translation of a resolution relating to procedure introduced in the Peers, see *Japan Weekly Mail*, March 7, 1891, pp. 279-280.

<sup>63</sup> Compare Shimizu, *Kempo Hen* (1923), pp. 1286-1288; Minobe, *Kempo Satsuyo* (1923), pp. 522-523.

Diet could not be convoked in time to save the Bank of Formosa from closing its doors. The Privy Council, to whom emergency financial ordinances must be submitted before their issuance, has maintained an attitude of strict interpretation of the constitution, and has consistently obstructed the development of a procedure that would add to the restrictions upon the Diet.

Returning to the general subject of public finance, we have still to consider the governmental crisis brought about by a rejection of the budget. As we have already noticed, all items in the three categories established by Article LXVII are beyond the power of the Diet to reduce or reject except with the consent of the executive. The theory supporting this exemption is that inasmuch as the Emperor exerts his prerogative in certain fields without the assent of the legislative will, the legislature must not be permitted to defeat the executive will by withholding supply. But even so, the Diet may withhold sufficient supply seriously to embarrass the Government. In this event, the constitution provides that resort can be had to the famous maneuver employed by Bismarck in 1862-63 against the Prussian Landtag. Article LXXI reads:

When the Imperial Diet has not voted on the budget, or when the budget has not been brought into actual existence, the Government shall carry out the budget of the preceding year.<sup>64</sup>

Such is the Japanese answer to the *impasse* which results when the Diet has not consented to the budget before the session ends or the new fiscal year begins. It also serves as one of the formidable obstacles to any parliamentary development along English lines, for it allows the cabinet to remain in office despite the defeat of its budget in the popular house.

The conditions wherein the budget is "not brought into actual existence" include: (1) if the Diet rejects the budget, or if the votes of the houses regarding the budget do not correspond, or if the consent of the Government is not obtained as to reserved items that are reduced or rejected; (2) if the House of Representatives is dissolved while the budget is still pending; and (3) if the Emperor does not give his sanction.<sup>65</sup> Under this régime, the cabinet is barred from applying an appropriation for any purpose other

<sup>64</sup> Concerning the origin of this article, see Ito, *Commentaries* (1889), pp. 135-136; Minobe, *Kempo Seigi* (1931), pp. 707-709.

<sup>65</sup> Uyesugi, *Kempo Jutsugi* (1927), p. 545; Shimizu, *Kempo Hen* (1923), pp. 1416-1418.

than that prescribed in the budget. The most common occasion for reverting to the previous budget under Article LXXI is that afforded by a premature dissolution or adjournment of the House of Representatives. Shortly after such an event, the finance minister lays before the cabinet a financial plan for the coming year; and although cabinet meetings are secret, the press is able to publish rather accurate details of the Government's financial plans.<sup>66</sup> In European systems, failure to secure the adoption of the budget is a catastrophe. But in Japan, ministers are not appalled at the prospect of carrying on the administration with an old budget. At least, legislative interference is in abeyance, or if an extra session is summoned, a supplementary budget will provide for the new expenditures.

#### IX. THE POWER OF AUDIT

The budget is the beginning of the financial business of the year; the accounts are the conclusion. Over both sides of this business, as Prince Ito has said, the Diet can exercise a measure of control, first by giving or withholding consent to the budget for the coming fiscal year and second by verifying the accounts of the past year. Hence, according to Article LXXII of the constitution, the expenditures and revenues of the state are verified by a Board of Audit. Its report is submitted to the two houses, and is referred to standing committees.<sup>67</sup> Ministers may be called to make explanations. Undoubtedly this parliamentary review promotes a greater sense of responsibility on the part of the cabinet, but there is lacking any means of enforcing such responsibility in case the Diet finds serious errors and refuses to approve the accounts.<sup>68</sup> The Government may be quizzed by interpellations and admonished in representations, and even a vote of censure may be passed. But, in want of ministerial responsibility, such efforts are merely gestures. Hence, the approval of the accounts tends to remain a perfunctory performance occurring in the closing hours of the session.

<sup>66</sup> For instance, see accounts published in the *Tokyo Asahi* and the *Osaka Mainichi* for January 24 and 25, 1930, following the dissolution of the Diet by decision of Premier Hamaguchi.

<sup>67</sup> Standing Orders of the House of Peers, ch. ii; Standing Orders of the House of Representatives, ch. ii. Chapter V of the *Kaikeiho*, or Law of Finance, prescribes the form of the report by the Board of Audit. *Genko Horei Shuran* (1927), Vol. II, bk. xii, pp. 1-3. For an English translation of the text of the *Kaikeiho* as promulgated in 1889, see Ito, *Commentaries* (1889), pp. 247-259.

<sup>68</sup> Compare Hozumi, *Kempo Teijo* (1910), Vol. II, pp. 908-910; Minobe, *Kempo Seigi* (1931), pp. 717-719; Uyesugi, *Kempo Jutsugi* (1927), p. 470.

## X. SUPERVISION OF ADMINISTRATION

Despite the efforts of the old school of constitutional doctrine to disparage the power of the Diet to supervise administration, there seems to be no question that the framers of the constitution gave a high place to this function. Prince Ito plainly states: "The Diet not only has its part in legislation, but indirectly it has also the responsibility of keeping a supervision over the administration." He particularly notes that this supervision is expressed in the Diet's "right to control the management of the finances."<sup>69</sup>

Thus, the new school swings back to original theory. Stated in the words of Minobe, this doctrine takes the following form:

The Diet is not merely an organ to give consent to legislation. It also participates in administration, and particularly has power to supervise the actions of the ministers of state. The sphere of governmental affairs in which the Diet can participate is identical with the competence of the ministers. Be it in legislation, or be it in administration, the Diet has authority to participate as long as the matter pertains to ministerial duties. The only difference between its legislative and supervisory functions is that in the performance of the former the Diet has the power to give consent, while in the performance of the latter it lacks power to give consent—but is enabled to participate in other ways.<sup>70</sup>

It is obvious that such a view of the functions of the Diet tends to exalt the legislature as the constitutional instrument for the expression of public opinion in political affairs. The Diet thus serves as the forum where government is carried on openly and not in secret chambers. It is true that the newspapers are important means for criticism of the executive. But the legislature, because of its constitutional basis and representative character, can do things that the press cannot accomplish. In other words, the Diet is the only representative organ that can criticize the administration, appraise it, demand explanations, request reports, and give a vote of censure. Again, the Diet serves even as a directing force to the executive. It is true that it lags far behind the parliament of Great Britain and the legislature in other countries that are copies of the "model of parliaments." But since Japanese cabinets find it difficult to govern without the coöperation of a majority in both houses, the ministers are forced to make concessions to the

<sup>69</sup> *Commentaries* (1889), p. 62.

<sup>70</sup> Minobe, *Kempo Seigi* (1931), pp. 423-424. Compare Ichimura, *Teikoku Kempo Ron* (1926), pp. 895-899; Sakuzo Yoshino, *Gendai Kensei no Unyo*, or "Studies in Recent Parliamentary Government" (Tokyo, 1930) ch. iv.

demands of the legislators and thus to submit, in some degree at least, to the supervision of the Diet.

The constitutional means whereby the legislative supervision of administration is effected include: (1) petitions, (2) representations, (3) interpellations, (4) addresses to the Emperor, (5) votes of censure, and (6) votes on the budget.

The right of the people to petition is recognized in the bill of rights in the constitution.<sup>71</sup> This is an ancient privilege. In the reign of Emperor Kotoku (645-654 A.D.), according to the old chronicles, a bell and a box were hung before the imperial palace, through which the people might make known their grievances. Today, petitions may be made to the Emperor, to the ministers, and to the Diet. Article L of the constitution specifically provides that both houses have power to receive petitions presented by Japanese citizens. Petitions, or *seigan*, must be presented through the medium of a member.<sup>72</sup> Rigid rules require that these papers must be in the form of a prayer, that they contain no words of disrespect toward the Imperial Household or of insult to the Government or the Diet; and neither house shall receive petitions for amending the constitution. In either house all petitions are referred to the committee on petitions, which reports to the house once a week. On the proposal of this committee, or of thirty members of the chamber, the house may debate the subject of any petition. When either house votes to entertain a petition, it is sent to the Government together with the memorial of the house thereon. The house may even demand a report by the Government. Neither chamber has any positive obligation to take petitions into consideration, nor has the cabinet an obligation to grant the prayer set forth.

In actual practice, petitions do not constitute a weighty instrument for control of the cabinet. Many of them contain trite or impractical proposals. In perfunctory fashion, members present to the clerk the handful of *seigan* that importunate constituents have thrust upon them. The committee on petitions conscientiously studies all proposals and grievances; but time presses, and there

<sup>71</sup> Article XXX. On this subject, compare Hisatsuna Furuya, *Système représentatif au Japon* (Brussels, 1899), pp. 163-167.

<sup>72</sup> The procedure is laid down in chapter xiii of the *Giin-ho*, or Law of the Houses, and in Standing Orders of the House of Peers, ch. viii, and Standing Orders of the House of Representatives, ch. x.

is a tendency to postpone the committee reports until the end of the session, when a large batch of petitions are hurriedly adopted without serious consideration. For instance, in the closing hours of the Fifty-ninth Diet, after the usual report of the chairman of the committee, the House of Representatives voted without debate to accept 294 petitions.<sup>73</sup>

Representations, or *kengi*, are another, and not much more effective, instrument of control over the executive. Authorized by Article XL of the constitution, *kengi* are formal expressions of legislative opinion addressed to the Government. Under Article LII of the *Giin-ho*, no representation in either house can be made a subject for debate unless thirty members support it. If not accepted by the Government, it cannot be offered a second time during the same session. From the writings of Prince Ito we learn that the framers of the constitution intended *kengi* to be a means for promoting both legislation and supervision of administration. As to legislation, the chambers as well as the Government possess the authority to initiate projects of law. But the ministries have the advantage of skillful drafting clerks, and besides this, a ministry is not hampered with the need for reconciling several hundred conflicting views when engaged in drawing up a bill. Thus, Prince Ito supposed it would prove more expeditious for the legislature in many cases to make a general expression of opinion upon a legislative matter and leave to the executive the task of drafting the proper bill. As to supervision of the executive, there is no question that the framers of the constitution intended representations to be used by the Diet in "keeping a watch upon the administration."<sup>74</sup>

This procedure—a well known feature of French parliamentary practice—was expected to compensate for the sleeveless errand of private members' bills. But even *kengi* are wanting in effectiveness because of their large number and because of lack of time, particularly in the lower house, to consider them. On one afternoon in the lower house in the fifty-second session, 121 representations

<sup>73</sup> *Kwampo gogai*, March 26, 1931, pp. 956–961. In this session, 29 *seigan* were adopted and sent directly to the Government, 547 were adopted and sent up to the House of Peers, and 1013 were treated as adopted. *Ibid.*, pp. 778–817, 956–961, 963–968, 1014.

<sup>74</sup> Ito, *Commentaries* (1889), p. 73. Compare Hozumi, *Kempo Teiyo* (1910), Vol. II, p. 485; Uyesugi, *Kempo Jutsugi* (1927), p. 472; Minobe, *Kempo Seigi* (1931), pp. 465–466.

were introduced and referred to committees, and in the closing hours of this session, 85 *kengi* were reported from the various committees and adopted.<sup>75</sup> In the fifty-ninth session (January-March, 1931), 265 representations were voted.<sup>76</sup> If the Government fails to accept the representations of the houses, there is no procedure for compelling compliance or for "turning the rascals out of office." Nor is there any contrivance, save a useless vote of censure, for insuring even a reply from the Government.

Interpellations or questions are important means of supervision in every legislature in which cabinet officers have seats and the right to speak. In the Japanese Diet, the opposition relies chiefly upon this method to bring the ministry to book. In either house, any member may put a question, or *shitsumon*, to a minister provided he obtains thirty supporters.<sup>77</sup> The question is proposed in a "concise memorandum" signed by the member and his supporters. The minister shall then immediately answer the question, or fix the day for his answer, or decline to answer, giving his reasons for declining. Replies are generally rendered with promptness, for postponement or refusal to reply, unless obviously made on grounds of grave danger to foreign relations or domestic tranquility, are signs of weakness and provoke humiliating taunts from the opposition.

On the eve of the opening of a session of the Diet, the leaders of the parties and groups in the opposition hastily map out a program of questions and assign parts to various members. No sooner are the ministerial speeches completed than the interpellations begin. And throughout the rest of the session, almost half of the time of the houses and much of the time of the committees is taken up with questions, replies of the ministers, retorts of the opposition members, and more speeches by the ministers and their supporters. In spite of the concise memoranda, the questions lack the brevity of their prototypes in the British Parliament. Obviously, *shitsumon* are employed by the opposition not only to secure information from the heads of departments, but also to embarrass and harrass the Government. Oftimes, questions are searching inquiries into

<sup>75</sup> *Kwampo gogai*, March 12 and 26, 1927, pp. 422, 697. Compare *Japan Chronicle*, March 17, 1927, p. 299.

<sup>76</sup> *Kwampo gogai*, March 28, 1931, pp. 1-56.

<sup>77</sup> *Giin-ho*, Articles XLVIII-L, LXXIV; Standing Orders of the House of Representatives, ch. viii. A request for documents may be coupled with the questions.

domestic or foreign policy; oftentimes, they are trivial and impertinent. On the same day that one member propounds a genuine question regarding the conduct of Japanese troops in Manchuria, another member inquires of the premier whether one of his ministers lustily sang a Red song at the funeral of a well-known socialist.<sup>78</sup> The speeches on both sides are frequently able and dignified specimens of forensic art, but frequently they descend into nagging and equivocation, and finally into vituperation and personal violence. Unlike the more formal interpellations in the French parliamentary régime, Japanese practice does not require that this procedure be concluded by a vote. Nevertheless, unsatisfactory replies may lead to the adoption of a representation, or even to a vote of censure.

A fourth weapon against the cabinet is the *joso*, or address to the Throne. No motion for such an address can be made the subject of debate unless supported by thirty members.<sup>79</sup> If adopted in either house, the president may request an audience with the Emperor to present the address. There is no constitutional limit to the subjects that may be embraced in the memorial. The address to the Throne has been used, as in 1892, to pray an interpretation of the constitution. It may also be used to give publicity to any dereliction of the ministry. The *joso* has no legal effect.<sup>80</sup> The Emperor may not care to reply. Nevertheless, the reluctance of ministers to submit to this form of castigation before the Throne prompts concessions which might not otherwise be made.

A fifth means of control over the executive is found in the *fushin-nin ketsugi* (resolution of non-confidence), the *monseki ketsugi* (resolution of censure), and the *dangai ketsugi* (resolution of impeachment). Neither the constitution nor the *Giin-ho* provides for these proceedings, which sound so drastic to Western ears. They have been developed by custom. Unlike the cabinet in the British and French parliamentary systems, the Japanese ministry is not responsible to the legislature, and thus resolutions of censure do not entail resignation. Furthermore, unlike the British practice, motions to censure or to impeach are not in the control of a leader of His Majesty's Opposition. Any member of the Diet may so

<sup>78</sup> *Kwampo gogai*, Feb. 3, 1932.

<sup>79</sup> *Giin-ho*, ch. xi.

<sup>80</sup> Uyesugi, *Kempo Jutsugi* (1927), pp. 471-472; Minobe, *Kempo Seigi* (1931), pp. 483-484, 681.

move. As a result, the adoption of such motions are not so serious as they are in genuinely parliamentary systems. At the same time, it must be remembered, a vote against the Government demonstrates the fact that the cabinet has lost control of the legislative process and is on the defensive. In 1917, the introduction of a non-confidence motion in the House of Representatives led to a dissolution of the lower chamber even before the resolution was debated.<sup>81</sup> Withal, whether a party cabinet or a super-party cabinet be in office, a vote of censure is a technical defeat which any ministry seeks to avoid.

More than this, the House of Representatives has not been loathe to lay its formal condemnation upon another organ which on occasion greatly influences, if not dominates, the cabinet. After the resignation of the Wakatsuki cabinet as a result of the refusal of the Privy Council to approve a proposed emergency financial ordinance, the House, which was still in control of the Seiyukai and their allies, adopted a *dangai ketsugi*, or impeachment resolution, censuring the Council for its "unprecedented" conduct.<sup>82</sup>

It is thus apparent that the place of the Diet in the Japanese political system depends upon its political relationships, which change from month to month, rather than upon its constitutional competence. Frequently, enthusiastic liberals declare that the day of transcendental cabinets is past, only to be confronted again with a super-party ministry. The progress of the Japanese Diet toward parliamentary government of the British type has been too slow for the liberals and too rapid for the conservatives; but so far as the constitution is concerned, there are no legal limitations upon the legislature that bar its way toward the attainment of dominance in the political field.

<sup>81</sup> The *fushinnin ketsugi* was worded: "Resolved, That the House of Representatives does not confide in the present cabinet." Just as Yukio Osaki mounted the rostrum to speak on the motion, the imperial decree arrived. *Dai Nippon Teikoku Gikai-shi*, Vol. X, pp. 1074-1079 (Jan. 25 1917).

<sup>82</sup> *Kwampo gogai* March 8, 1927, pp. 8, 77.

## CONSTITUTIONAL LAW IN 1932-33

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1932

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#### A. QUESTIONS OF NATIONAL POWER

##### I. LEGISLATIVE POWER

###### *1. Interstate Commerce—Radio Control*

The Supreme Court has at last passed squarely upon the broad powers of the Federal Radio Commission over the business of broadcasting and has upheld them in a sweeping manner in the case of *Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co.*<sup>1</sup> The general authority conferred on the Commission by the act of 1927 was enlarged in 1928 by provisions directing the Commission to maintain as great equality as possible in the allocating of broadcasting licenses among the zones created and further to distribute such licenses fairly and reasonably to the states within each zone according to population. In 1930, it appeared that Illinois had 55 per cent more than its quota of stations, while Indiana had 22 per cent under its quota. The Commission assigned to station WJKS at Gary, Indiana, operating rights on a frequency theretofore used by two Chicago stations. One of these, operated commercially by the respondent, used much National Broadcasting Company program material; the other, operated by the North Shore Church of Chicago, broadcast only religious programs. The effect of the order was to rule these stations off the air. It appeared that the Gary station had suffered from interference, and was furthermore equipped to serve its audiences with programs of unique interest. The Court of Appeals of the District of Columbia held the order void as "arbitrary and capricious."

Chief Justice Hughes' opinion for a unanimous Court upholding the Commission's order considered first the Court's jurisdiction to hear the case. In *Federal Radio Commission v. General Electric Co.*,<sup>2</sup> the Court had held that the Radio Act of 1927, in conferring upon the Court of Appeals of the District the right to review the Commission's findings and to alter and revise them as seemed just in the light of evidence received, made that tribunal a superior and revising agency in the administrative field. Its decisions could not, therefore, be reviewed by the Supreme Court, since such review would involve the exercise of non-judicial power. But in 1930, in order to meet this decision, Congress

<sup>1</sup> 289 U. S. 266, 1933.

<sup>2</sup> 281 U.S. 464, 1930. For comment, see this REVIEW, vol. 25, p. 78.

amended the act so that the power of the Court of Appeals of the District is now limited to a review of "questions of law." It further specified that "findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious." These changes clearly establish judicial review in place of the earlier administrative review, and the decisions of the Court of Appeals of the District may therefore be reviewed by the Supreme Court without the exercise of non-judicial power.

The Court then proceeds to consider the validity of the Commission's order. The Commission had power to refuse or grant licenses, renewals or applications. This power Congress could properly confer upon it in view of the limited broadcasting facilities available and the confusion resulting from interference. No stations acquire any rights superior to these broad powers of regulation. "The power of Congress in the regulation of interstate commerce is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy, as such a restriction would place the regulation in the hands of private individuals and withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their enterprises." The allotment made in the present order is not arbitrary or capricious, in view of the relative quota status of Illinois and Indiana. The stations operated by the respondents are deleted, not because of failure to meet legal requirements, but in the interest of equitable allocation. The Commission's findings are supported by evidence, and the procedure followed was not open to attack.

## *2. National Taxation*

*a. Due Process Problems in National Taxation.* Brooks, a citizen of Great Britain, residing in Cuba, died there leaving an estate consisting in part of bonds, securities, and cash deposits which were located in New York, where the income was collected and placed to his credit. Could this property be lawfully included in his gross estate for purposes of the Federal Estate Tax Act? The law includes in a decedent's gross estate property "which at the time of his death is situated in the United States." The Court, in an opinion by Chief Justice Hughes, in the case of *Burnet v. Brooks*,<sup>3</sup> upholds the inclusion of the property for taxing purposes. There is evidence of legislative intention to place within reach of the estate tax all property, tangible or intangible, which is physically present in the United States at the time of the decedent's death. But is a federal tax upon intangibles kept in this country owned by non-residents consistent with due process of law, which requires clear jurisdiction over property for purposes of taxation? The argument is, of course,

<sup>3</sup> 288 U.S. 378, 1933.

based on the maxim *mobilia sequuntur personam* which regards bonds and securities as property at the domicile of the owner. And the Court is confronted by its own recent decisions in *Farmer's Loan & Trust Co. v. Minnesota*<sup>4</sup> and *Baldwin v. Missouri*,<sup>5</sup> in which it not only followed the doctrine that intangibles are property at the domicile of the owner but, in order to avoid double taxation, denied to the states in which the securities were physically present jurisdiction to tax them. In the present case, the Court emphasizes that these decisions bearing upon the jurisdiction of the states to tax were predicated upon the principle that "proper regard for the relation of the states in our system required that the property under consideration should be taxed in only one state and that jurisdiction to tax was restricted accordingly." The federal government, however, is not thus limited in its power to tax. Its taxing authority is unimpaired by the possibility of any ensuing double taxation. "As a nation with all the attributes of sovereignty, the United States is vested with all the powers necessary to maintain an effective control of international relations." Consequently it may tax any and all property which, without violating the principles of international law, may be deemed to lie within its jurisdiction. Judged by such a standard, as well as by the accepted practice of this and other countries, the intangibles here involved were properly taxable in this country.

Three cases presented due process questions relating to the applicability of the federal estate tax law to technical transfers of property made before death. In *Gwinn v. Commissioner of Internal Revenue*,<sup>6</sup> a mother and son acquired by equal contributions certain property as joint tenants. At her death, half the value of the joint property was included in the value of her gross estate. This was upheld on the theory that while no actual transfer took place, the death of one of the parties to the joint tenancy "became the 'generating source' of important and definite accessions to the property rights of the other." The transfer of these rights is properly taxable under the law. In *Porter v. Commissioner of Internal Revenue*,<sup>7</sup> Porter created five trusts for the benefit of his daughter and her children. In each case he reserved to himself the right to alter the trusts in any manner except by changes in favor of himself or his estate. It was held that Porter's death ended the possibility of change by him in the nature or disposition of the trusts, and was therefore "the source of valuable assurance passing from the dead to the living." The value of the trusts was properly taxable under the estate tax act. In *Reinecke v. Smith*,<sup>8</sup> trusts were created for the benefit of the grantor's wife and children. The trustees were the grantor, a son who was also a beneficiary,

<sup>4</sup> 280 U.S. 204, 1930. For comment, see this REVIEW, vol. 25, p. 90.

<sup>5</sup> 281 U.S. 586, 1930. For comment, see this REVIEW, vol. 25, p. 92.

<sup>6</sup> 287 U.S. 224, 1932.

<sup>7</sup> 288 U.S. 436, 1933.

<sup>8</sup> 289 U.S. 172, 1933.

and a banking company. The trusts were specifically subject to change or revocation by the grantor together with either one of the other two trustees. While it had earlier been held<sup>9</sup> that a trust revocable only by the joint action of the grantor and the beneficiary was not taxable as part of the grantor's estate since the beneficiary may always prevent revocation, that situation does not prevail here. The grantor in this case retains practically full power to revoke or change the trusts, since he may do so with the consent of a trustee who is not a beneficiary and who has, therefore, no interest adverse to such change. A revocable trust amounts to "no more than an assignment of income" during the life of the grantor, and the value of the trusts is therefore properly included in his estate at death. A scrutiny of these somewhat technical cases indicates how persistent and shrewd are the efforts made to evade the estate tax, and how important it is that the Court, as here, should decide these cases in the light of practical realities rather than their superficial aspects. The problem of due process in each of the cases arises from the fact that the inclusion in a decedent's estate for purposes of estate taxation of property finally transferred before death would be a taking of property without due process of law.<sup>10</sup>

b. *Taxation of State Agencies.* A new problem in the field of inter-governmental taxation was presented in the case of Board of Trustees of the University of Illinois v. United States.<sup>11</sup> The University imported scientific materials for use in its laboratories and was compelled to pay import duties thereon to the federal government. These payments were made under protest, the University insisting that as an instrumentality of the state of Illinois and discharging a governmental function it was free from taxation by the federal government. In a unanimous opinion by Chief Justice Hughes, the tax was sustained. The import duties in question are imposed by Congress in the exercise of its authority "to regulate commerce with foreign nations." This authority over foreign commerce is plenary. It includes the right to determine what articles may be imported into this country and the terms upon which such importation is permitted. No one has any vested right to engage in foreign commerce, and Congress might, should it see fit, place a complete embargo upon the importation of goods from abroad. No state has any right to engage in foreign commerce free from the restrictions which Congress may impose.

The opinion is interesting for two reasons. In the first place, the Court

<sup>9</sup> Reinecke v. Northern Trust Co., 278 U.S. 339, 1929. For comment, see this REVIEW, vol. 24, p. 75.

<sup>10</sup> Problems of due process affecting somewhat technical aspects of federal taxation are dealt with in Burnet v. Guggenheim, 288 U.S. 280, 1933, and Moore Ice Cream Co. v. Rose, 289 U.S. 373, 1933. <sup>11</sup> 289 U.S. 48, 1933.

has at last recognized the commerce power as the constitutional basis for the imposition of tariff duties. It will be recalled that in *Hampton & Co. v. United States*<sup>12</sup> the validity of the protective tariff was upheld on the theory that it was a phase of the federal taxing power. The present interpretation of the tariff as a regulation of commerce is certainly far more realistic. In the second place, it may be noted that while the power of the federal government to lay taxes is limited by "the principle of duality in our system of government" so as to forbid the imposition of a tax which burdens an instrumentality of the state, it is here emphasized that the power over foreign commerce, being exclusive and plenary, is not subject to the limitations arising out of this duality. It appears, therefore, that if the states and their instrumentalities are to escape the payment of tariff duties, it must be as the result of specific action by Congress to that end.

In *Burnet v. Jergin's Trust*,<sup>13</sup> the city of Long Beach owned certain lands upon which oil was discovered. Part of these lands were leased by the city to the respondent for the purpose of developing the oil resources under an agreement which gave the city 40 and the respondent 60 per cent of the proceeds. The Court refuses to hold the income derived by the respondent from the lease immune from federal income taxation. It appears that the tax is not on the property of the city, nor on the city's income from its property, nor on its share of the oil, nor on the lease, nor on the gross income from the lease. "We think that in the present instance the subject of the tax is so remote from any governmental function as to render the effect of the exaction inconsiderable as respects the activities of the city." The Court distinguishes the present case from earlier decisions seemingly in conflict with it on the ground that in those cases "the burden upon the public use was more definite and direct than in the present case." The case represents a further step in the direction of establishing the degree of interference with a governmental agency as the test of the validity of a federal tax upon it.<sup>14</sup>

<sup>12</sup> 276 U.S. 394, 1928. For comment, see this REVIEW, vol. 23, p. 78.

<sup>13</sup> 288 U.S. 508, 1933.

<sup>14</sup> The case of *Cook v. United States*, 288 U.S. 102, 1933, involved the problem of the supersedure of a treaty by a subsequent statute. The tariff act of 1922 authorized Coast Guard officials to search and seize vessels within twelve miles of our coast for violations of the prohibition laws. By treaty with Great Britain in 1924, this right was limited to "the distance from the coast of the United States which can be traversed in one hour by the suspected vessel." The tariff act of 1930 contained the identical provision on this point found in the earlier statute. The Supreme Court refused to hold that the act of 1930 had superseded the treaty of 1924. There is no evidence that Congress had intended this supersedure, and until the present case administrative officers had assumed the treaty to be still effective. A treaty will be deemed to be abrogated by a later statute only when the legislative intention to abrogate is clearly expressed.

## II. JUDICIAL POWER AND FEDERAL COURTS

1. *Constitutional versus Legislative Courts*

In two important cases, the Supreme Court has at last settled the status of the courts of the District of Columbia and the Court of Claims. In doing so, it has left an aftermath of overruled decisions and discarded dicta in its wake. Both cases arose under the legislative reduction of salaries effected by the act of 1932. It is obvious that if the courts in question are constitutional courts organized under Article III of the Constitution, the salary reductions are invalid as being specifically forbidden by that article. If, on the other hand, the courts of the District of Columbia and the Court of Claims are legislative courts created by Congress in pursuance of delegated powers other than those set forth in Article III, the salaries of the judges are subject to such diminution as Congress may deem expedient.

In *O'Donoghue v. United States*,<sup>15</sup> the courts of the District of Columbia are held to be constitutional courts within the provisions of Article III. This conclusion, of course, definitely discards the dictum in the case of *Ex parte Bakelite Corporation*,<sup>16</sup> in which Mr. Justice Van Devanter had declared the courts of the District to be legislative courts. The present conclusion is supported in an opinion by Mr. Justice Sutherland upon the following grounds: First, the courts of the District are to be distinguished from territorial courts, which, since Marshall's decision in *American Insurance Company v. Canter*,<sup>17</sup> have been held to be legislative courts, on the ground of the permanent character of the District of Columbia. Territories are admittedly temporary in status, while the District of Columbia is established permanently. This fact lends force to the view that the courts of the District are part of the regular judicial system of the country created under the authority of Article III. In the second place, the District of Columbia comprises territory ceded by Maryland and Virginia to which the Constitution originally attached. The courts originally sitting in this territory were, of course, constitutional courts. The Constitution once having attached to this area cannot be revoked therein, and consequently the courts of the District are still constitutional courts. In the third place, it has been repeatedly held that the territorial courts are incapable of receiving the judicial power of the United States derived from Article III, whereas exactly the opposite rule has been applied to the courts of the District. This analysis, however, does not meet the point that Congress has consistently imposed upon the courts of the District of Columbia duties which are non-judicial in character. Its power to do so was sustained in the recent case of *Federal*

<sup>15</sup> 289 U.S. 516, 1933.

<sup>16</sup> 279 U.S. 438, 1929. For comment, see this REVIEW, vol. 24, p. 80.

<sup>17</sup> 1 Peters 511, 1828.

Radio Commission v. General Electric Company.<sup>18</sup> How can this be reconciled with the established doctrine that Congress may not impose non-judicial duties upon the courts created under the authority of Article III, a doctrine resting upon the theory of the separation of powers? This difficulty Mr. Justice Sutherland meets by declaring that the courts of the District are created not only in pursuance of Article III, but also under the special power granted to Congress to govern the District. Thus there is established a dual basis for control. The courts of the District are thus entitled to the immunities created by Article III with reference to tenure and compensation, while at the same time they may be freely utilized by Congress in the performance of administrative or other non-judicial duties. A brief dissenting opinion by Chief Justice Hughes, concurred in by Justices Van Devanter and Cardozo, rejects the constitutional character of the courts of the District and reaffirms the Court's previous position that those tribunals are created under the special authority conferred for the government of the District of Columbia.

The case of Williams v. United States<sup>19</sup> establishes that the Court of Claims is a legislative court, and not created under the authority of the judiciary article of the Constitution. The history of the Court of Claims supports this conclusion and indicates that this is the view which Congress has consistently taken with regard to it. But does not the Court of Claims exercise judicial power, and if so, does not that judicial power come from Article III? The Court, speaking again through Mr. Justice Sutherland, holds that the Court of Claims does exercise judicial power, but not the judicial power defined in Article III. It is rather a judicial power analogous to that exercised by the territorial courts and that exercised by both federal and state courts in the naturalization of aliens. A difficulty seems to be presented by the fact that the Court of Claims hears actions brought against the United States, while Article III specifically describes the federal judicial power as extending to "controversies to which the United States shall be a party." The Court, however, holds that the clause quoted from Article III must be interpreted as not extending judicial power to cases in which the United States is a defendant, since the framers of the Constitution did not intend to authorize suits against the government. Hence the jurisdiction over such suits cannot be derived from Article III. Furthermore, Congress could confer the power to hear and determine claims against the United States upon some branch of the executive department or upon the committees of Congress itself. This being so, the power exercised by the Court of Claims cannot be the judicial power defined in Article III, which obviously cannot be conferred upon any non-judicial body.

<sup>18</sup> 281 U.S. 464, 1930. For comment, see this REVIEW, vol. 25, p. 78.

<sup>19</sup> 289 U.S. 553, 1933.

*2. Declaratory Judgments*

One of the more important cases decided at the present term is that of *Nashville, C. & St. L. R. Co. v. Wallace*,<sup>20</sup> in which the Supreme Court decided unanimously that it could properly review a declaratory judgment originating in a state court. The case arose out of a suit brought in a Tennessee court under the Uniform Declaratory Judgments Act of that state to secure a judicial declaration that a state excise tax levied upon the storage of gasoline in the state by the railroad violated both the commerce clause and the Fourteenth Amendment.<sup>21</sup> The substance of the Tennessee Declaratory Judgments Act may be summarized as follows: 1. It authorizes the declaration of rights whether or not further relief is or could be claimed. 2. Such declaration may be positive or negative, and shall have the force and effect of a final judgment or decree. 3. Any person whose rights, status, or regular relations are affected by a statute may have determined any question of construction or validity arising under the statute and may obtain a declaration of rights thereunder. 4. The courts may refuse to give a declaratory judgment where, if rendered, it would "not terminate the uncertainty or controversy giving rise to the proceeding." 5. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not made parties to the proceedings.

In the present case, the relief sought is that the taxing statute shall be declared void. Mr. Justice Stone, speaking for the Court, points out that the facts of the case would constitute a case or controversy within the reach of judicial power if presented in an action for an injunction to restrain the collection of the tax. The precise form in which the case is presented is not important as long as the elements are present necessary to make a case or controversy within the reach of federal judicial power. This is not a request for an abstract determination of the validity of a statute presented in a case in which no genuine adverse interests are present, nor is it "a decision advising what the law would be on an uncertain or hypothetical statement of facts as was thought to be the case in *Liberty Warehouse Co. v. Grannis*."<sup>22</sup> Nor is it less an exercise of judicial power because it does not result in a judgment requiring an award of process or execution. Such awards of process or execution are not indispensable to judicial power, as is evidenced by their absence in the adjudication of state boundaries and in the review of judgments of the Court of Claims where no process lies against the government.

<sup>20</sup> 288 U.S. 249, 1933.

<sup>21</sup> The validity of this tax is discussed on page 62 *infra*.

<sup>22</sup> 273 U.S. 70, 1927. For comment, see this REVIEW, vol. 22, p. 85.

The decision has been received with great satisfaction by those who have long been sponsoring the declaratory judgment as a desirable reform in American jurisprudence. The earlier opinions of the Supreme Court had been hostile to the declaratory judgment, although the major issues involved in the new procedure were never squarely raised.<sup>23</sup> The opinion in the present case represents a change in attitude. As Professor Borchard puts it, "The bogey which for so long confused the declaratory judgment with an advisory opinion or a moot case has thus finally been laid to rest. All that is needed for the exercise of judicial power is a 'real and substantial' controversy, raised by one party against another party having adverse interests, and susceptible of judicial determination."<sup>24</sup> It seems evident that a carefully drawn statute conferring upon the federal courts the power to render declaratory judgments would be upheld.

### *3. Admiralty Jurisdiction*

In *United States v. Flores*,<sup>25</sup> the jurisdiction of the United States district court in Pennsylvania was upheld in a prosecution for a murder committed by an American citizen on a United States vessel 250 miles inland on one of the rivers of the Belgian Congo. This jurisdiction is held to be derived from the admiralty and maritime jurisdiction of the United States, which is not limited to the territorial waters of the United States nor to the high seas, but extends as well to American vessels in foreign waters. This broad range of admiralty and maritime jurisdiction is held not to be limited in its geographic scope by the specific constitutional grant to Congress of the power to define and punish piracies and felonies committed on the high seas and offenses against the law of nations. The concurrent criminal jurisdiction of the Belgian government is frankly admitted, but since that jurisdiction was not asserted it does not enter as a factor in the present case.<sup>26</sup>

<sup>23</sup> See *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 1927; *Liberty Warehouse Co. v. Burley Tobacco Growers' Coöperative Marketing Association*, 276 U.S. 71, 1928; *Willing v. Chicago Auditorium Association*, 277 U.S. 274, 1928. For comment on this last case, see this REVIEW, vol. 23, p. 82.

<sup>24</sup> See his brief note on this case, *Yale Law Journal*, vol. 42, p. 974.

<sup>25</sup> 289 U.S. 137, 1933.

<sup>26</sup> The exercise of federal judicial power in suits between states occurs in the case of *Vermont v. New Hampshire*, 289 U.S. 593, 1933, in which a boundary dispute is adjusted, and in *Wisconsin v. Illinois*, 289 U.S. 395, 1933, in which the Court's earlier decree in the Lake Michigan water diversion case is enlarged to include a mandate upon Illinois to take steps to secure the completion of the needed sewage disposal plant. Other cases throwing light upon the scope and exercise of federal judicial power are *Hawks v. Hamill*, 288 U.S. 52, 1933; *Miller v. Aderhold*, 288 U.S. 206, 1933; *Quercia v. United States*, 289 U.S. 466, 1933; *Public Service Commission v. Wisconsin Telephone Company*, 289 U.S. 67, 1933.

## III. FEDERAL BILL OF RIGHTS

*1. Searches and Seizures*

In two cases, the Supreme Court emphasizes again the strictness with which it will enforce the search and seizure guarantees of the Fourth Amendment for the benefit of individuals charged with crime. In *Grau v. United States*,<sup>27</sup> a search warrant under which liquor had been found and used as evidence against the accused was held void for failure to allege the unlawful sale of intoxicating liquor in the dwelling house to be searched. The National Prohibition Act expressly forbids the search of a private dwelling unless it is being used for the unlawful sale of liquor. The warrant here not only failed to allege the sale, but did not set forth facts which would lead "a man of prudence and caution to believe that the offense has been committed."

In *Sgro v. United States*,<sup>28</sup> a warrant was issued for the search of a hotel, but was not executed within the ten days prescribed by the National Prohibition Act. Some days after its expiration it was redated, reissued, and executed. The Court held the search invalid as not being supported by a proper warrant. A valid warrant must rest upon a proper finding and statement that probable cause at that time exists. There was no proof that probable cause did exist at the date of the reissue of the warrant. The Fourth Amendment should be construed liberally in favor of the individual, and its reasonable interpretation does not support the search in the present case.

*2. Due Process of Law—Eminent Domain*

In *Reichelderfer v. Quinn*,<sup>29</sup> it was urged on the Court that the erection of a fire engine house in Rock Creek Park in the city of Washington near the property of the respondents amounted to a taking of that property without compensation in violation of the Fifth Amendment. It was alleged that the park at its creation was perpetually dedicated to park purposes and that abutting owners, relying upon this dedication, had acquired rights to the continued use of the land for park purposes which could not be taken away without compensation. The Court finds no basis for implying any restrictions upon the park lands in favor of adjoining owner. The dedication of the park implied no promise that it would be continued in perpetuity.<sup>30</sup>

<sup>27</sup> 287 U.S. 124, 1932.

<sup>28</sup> 287 U.S. 206, 1932.

<sup>29</sup> 287 U.S. 315, 1932.

<sup>30</sup> The due process requirement of certainty in a criminal statute is involved in *United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77, 1932; while the due process aspects of the judicial review of administrative determinations are considered in *Lloyd Sabado Societa Anonima v. Elting*, 287 U.S. 329, 1932, and in *Norfolk & Western Ry. Co. v. United States*, 287 U.S. 134, 1932.

## IV. STATUTORY INTERPRETATION

*1. The Interstate Commerce Commission and its Powers*

The present term presented a number of cases involving the construction of the Transportation Act of 1920 and the powers of the Interstate Commerce Commission thereunder. Of these, the following may be singled out for comment. In *New York Central Securities Corporation v. United States*,<sup>31</sup> the Commission authorized the New York Central to acquire control by lease of the Big Four Railroad and the Michigan Central Railroad, each of which it already controlled through stock ownership. This order was held valid. Questions as to whether the Transportation Act conferred the power here exercised upon the Commission were answered affirmatively. One interesting constitutional question was raised, namely, whether Congress had improperly delegated legislative power to the Commission by authorizing it to permit one railroad to acquire control of another when the "public interest" required it. It was urged that the criterion of public interest was vague and uncertain, and permitted the Commission to act in accordance with its conception of the general public welfare. The Court held, however, that public interest is a criterion not lacking in reasonable certainty, since it is to be defined in terms of the purposes which have been held by the Court to underlie the act of 1920. These purposes include adequacy of transportation services, economy and efficiency, and the best use of transportation facilities. Guided by these standards, the Commission is not exercising legislative power, but is giving effect to a congressional policy.

In *Interstate Commerce Commission v. Oregon-Washington R. & Nav. Co.*,<sup>32</sup> the Supreme Court side-stepped an important constitutional issue by adopting a limited construction of the Transportation Act of 1920. That statute allows the Interstate Commerce Commission to order a railroad to "extend its lines" provided public necessity and convenience requires such extension, and provided the ability of the carrier to render adequate public service will not be impaired. In pursuance of this authority, the commission ordered a subsidiary of the Union Pacific Railroad Company to build 185 miles of railroad across the Central Desert of Oregon at a cost of approximately ten million dollars. The Commission's findings indicated that the extension would not be immediately profitable but might become so in time. The Supreme Court set aside the order as not being within the authority conferred by the statute. It held that in the light of earlier interpretations the term "extension" must be limited to mean extensions within the present area of service rather than those which penetrate into new and previously unserved territory. Declaring that it is the duty of the Court so to construe a statute when possible as

<sup>31</sup> 287 U.S. 12, 1932.

<sup>32</sup> 288 U.S. 14, 1933.

to avoid giving it an unconstitutional meaning, or even a meaning which would raise grave doubts as to its validity, the Court intimated that unless the statute was thus narrowly construed it would violate the due process clause of the Fifth Amendment. A dissenting opinion by Mr. Justice Cardozo, concurred in by Justices Brandeis and Stone, urged that Congress had intended to confer exactly the power which the Commission had here sought to exercise, and that such power involved no denial of due process.

Alton Railroad Company v. United States<sup>33</sup> upheld the jurisdiction of the Court to review an order of the Interstate Commerce Commission declaring a division of joint rates voluntarily established by carriers to be not unreasonable. Such an order, though negative in form, was declared to be not negative in character so as to fall within the rule forbidding judicial review of orders of the Interstate Commerce Commission which are negative in character. The Commission is not at liberty to decline to exercise its jurisdiction when invoked to secure the determination of the question of whether such joint rates shall be maintained.<sup>34</sup>

## *2. The Sherman Act*

A case of great present importance and far-reaching implications is that of Appalachian Coals, Inc. v. United States,<sup>35</sup> which involved a suit to enjoin a combination alleged to be in restraint of interstate commerce. The producers of 74 per cent of the bituminous coal in the Appalachian area created the Appalachian Coals, Incorporated, as an exclusive selling agency. Its alleged purpose was to "increase the sale, and thus the production, of Appalachian coal through better methods of distribution, intensive advertising and research, to achieve economies in marketing, and to eliminate abnormal, deceptive, and destructive trade practices." In an illuminating opinion by Chief Justice Hughes, the Court fails to find a violation of the Sherman Act. Reiterating the well known "rule of reason" to the effect that the Sherman Act bans only such restraints of trade as are unreasonable, the Chief Justice proceeds to analyze the factual elements involved. The deplorable condition of the coal industry is reviewed and the objectionable and destructive competitive practices prevailing therein are examined. The evidence is held to indicate that the defendants' intentions are to remedy these undesirable conditions, and that the plan proposed will not result in the fixing of the prices of coal in consumers' markets or in unreasonable restraints upon fair competition. The acute-

<sup>33</sup> 287 U.S. 229, 1932.

<sup>34</sup> Other aspects of the statutory powers of the Interstate Commerce Commission are involved in Texas & Pacific Ry. Co. v. United States, 289 U.S. 627, 1933 and United States v. Great Northern Ry. Co., 287 U.S. 144, 1932.

<sup>35</sup> 288 U.S. 344, 1933.

ness of the present economic situation is strikingly alluded to. "When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated, the wells of commerce go dry." In such a situation, "voluntary action to rescue and preserve these opportunities [of fair competition], and thus to aid in relieving a depressed industry and in reviving commerce by placing competition upon a sounder basis, may be more efficacious than an attempt to provide remedies through legal processes." On the evidence, it seems apparent that the producing companies might lawfully have merged their properties under a single ownership. The proposed organization is less drastic and equally lawful. The injunction sought by the government is denied, but since the selling agency has not yet been put into operation, the action may be renewed if experience demonstrates that the plan results in actual violations of the Sherman Act.

### *3. The National Prohibition Act—Entrapment*

In *Sorrells v. United States*,<sup>36</sup> a conviction under the National Prohibition Act was secured upon evidence indicating that the accused had sold intoxicating liquor to a government agent only very reluctantly and as a result of the urgent solicitation and insistence of the officer, who was posing as a tourist. This gave the Supreme Court an opportunity to settle the question as to the meaning and use of the defense of entrapment. A majority of the Court, speaking through Mr. Justice Hughes, recognized the propriety of this defense. It emphasized the desirability of not punishing those who have been led to commit crime by the instigation of government officials. To this end, the Court develops the theory that the penal statute involved must be so construed as not to extend to offenses committed under these circumstances. In a separate opinion by Mr. Justice Roberts, and concurred in by Justices Brandeis and Stone, this theory is rejected and in its place it is urged that the doctrine should be set up that on grounds of public policy the federal courts must be deemed closed to the trial of crimes instigated by the government's own agents.

### *4. Apportionment of Congressional Districts*

Under the Congressional Reapportionment Act of 1929, Mississippi is entitled to seven representatives in Congress instead of eight as before. In 1932, the legislature of the state blocked out seven congressional districts. This statute was attacked on the ground that these districts were not composed of contiguous and compact territory and did not contain as nearly as practicable an equal number of inhabitants. Action was brought to have the state districting act set aside and the representatives in Congress chosen on a state-wide ballot. In the Congressional Apportion-

<sup>36</sup> 287 U.S. 435, 1932.

ment Act of 1911, the requirements of compact and contiguous territory and substantial equality of population were definitely set up, but in the act of 1929 these requirements were omitted. The legislative history of the later act makes it clear, furthermore, that they were not omitted through inadvertence but that the omission was deliberate. Such being the case, the earlier federal restrictions upon gerrymandering are no longer applicable and the Mississippi statute is not open to attack. This is the case of *Wood v. Broom*.<sup>37</sup>

## B. QUESTIONS OF STATE POWER

### I. FOURTEENTH AMENDMENT

#### 1. Due Process of Law

a. *Due Process and State Police Power.* In *Advance-Rumely Thresher Co. v. Jackson*,<sup>38</sup> a North Dakota statute providing that persons buying certain classes of complicated farm machinery should have a reasonable time for the inspection and testing of it and the privilege of rescinding the contract for its purchase should it prove to be unfit for the purpose for which it was sold. To this was added the stipulation that any contracts purporting to waive the rights created by the statute should be void as against public policy. The statute is upheld as a valid exercise of the state police power. It is pointed out that the average farmer is not sufficiently familiar with new and complicated machinery to be able to judge its fitness without thorough trial, and at the same time the economic distress resulting from the severe losses which the statute aims to prevent, and which would be borne by those engaged in the state's basic industry, justifies the restrictions set up.

In *Young v. Masci*,<sup>39</sup> there is held to be no denial of due process of law in holding liable for damages under a New York statute a New Jersey citizen who loaned his automobile to a third person who took the car to New York and there negligently inflicted injury. The evidence showed that the owner had given permission, either express or implied, to make the trip.

The broad range of the states' police power in dealing with the use of their public highways is made clear in the case of *Stephenson v. Binford*.<sup>40</sup> A Texas statute, in addition to elaborate provisions governing common carriers operating for hire over the state roads, subjected private carriers operating under contract to the following restrictions. Contract carriers must secure from the railroad commission a permit to operate as such. Such permit is not to be issued if the operation of such contract carrier will impair the efficient public service of any authorized common carrier

<sup>37</sup> 287 U.S. 1, 1932.

<sup>38</sup> 289 U.S. 253, 1933.

<sup>39</sup> 287 U.S. 283, 1932.

<sup>40</sup> 287 U.S. 251, 1932.

serving the same territory. The commission is to regulate the competition of contract carriers with common carriers and may establish minimum rates for such contract carriers "which shall not be less than the rates prescribed for common carriers for substantially the same service." Contract carriers and common carriers must be mutually exclusive, neither assuming the status and privileges of the other. The validity of these provisions was attacked on the ground that they virtually convert private contract carriers into common carriers by legislative fiat, compel them to devote their property to quasi-public use, and thus deprive them of property without just compensation and in denial of due process of law. The Supreme Court sustained the act in the face of these objections. The statute does not convert private contract carriers into common carriers. It is rather a police regulation passed in pursuance of the states' power to deal with the increasingly complex and pressing problems of highway control. It is a "means to the legitimate end of conserving the highways" and fostering "a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain." The power of the state over its highways is analogous to that which it enjoys with respect to the conditions under which it permits public work to be done on its behalf. "It may be said with like force that it belongs to the state 'as master in its own house,' to prescribe the terms upon which persons will be permitted to contract in respect of the use of the public highways for purposes of gain." The statute does not violate the equality clause of the Fourteenth Amendment, because it fails to subject "shipper-owners" to the restrictions complained of.

In *Gant v. Oklahoma City*,<sup>41</sup> a municipal ordinance required anyone drilling an oil or gas well within the city limits to file with the city clerk a bond of \$200,000 through a bonding company for each well to cover the payment of damages resulting from the "drilling, operation, or maintenance of any well or any structures appurtenant thereto." This is held not to deny due process. In view of the dangers implicit in the drilling and operation of gas or oil wells, the requirement is neither arbitrary nor unreasonable, nor is it rendered invalid by reason of the fact that in particular cases it works great hardship upon those unable to comply with its terms.

There is no denial of due process or equal protection of the laws in a state statute raising the presumption that the failure of a railroad company to give required signals is the proximate cause of a grade crossing accident, as long as evidence rebutting the presumption is presented for the consideration of the jury. This is the case of *Atlantic Coast Line R. Co. v. Ford*.<sup>42</sup>

<sup>41</sup> 289 U.S. 98, 1933.

<sup>42</sup> 287 U.S. 502, 1933.

*b. Due Process and the Military Power of the State Governor.* In August, 1931, the legislature of Texas amended the state oil and conservation act to provide for restriction of oil production. Thereupon Governor Sterling, declaring that an organized group of oil and gas producers were "in a state of insurrection" against the conservation laws, and that the high public resentment aroused against them had caused imminent danger of widespread violence, proclaimed martial law in certain areas, called out state troops, and shut down the wells. In September, the railroad commission, in pursuance of the statute, made an order limiting production, and with the aid of the military force this was enforced. A federal district court enjoined the commission from the enforcement of the orders on constitutional grounds. The governor and his military officers, assuming themselves to be outside the jurisdiction of the court because of the prevalence of "war conditions," took over control of the production of oil and proceeded to enforce drastic limitations. An amended complaint was filed making the governor and his military officers parties to the suit and alleging the invalidity of the military and executive orders under the state constitution and laws and under the Fourteenth Amendment. In defense of the governor's action, it was urged that he had the power to declare martial law, that the sufficiency of his reasons for doing so are not subject to judicial review, that the means of enforcing martial law may not be controlled by injunction, and that the governor's finding that it is necessary to take property constitutes due process of law. The issues were presented to the Court in *Sterling v. Constantin*.<sup>43</sup>

A unanimous court, speaking through Chief Justice Hughes, upheld the injunction, making the following points: First, the district court had jurisdiction since the action was not a suit against the state, since the governor enjoys no immunity against federal judicial action, and since federal questions were properly raised. Second, it is assumed, without so deciding, that the state constitution authorizes what the governor has done, since this is a problem of local law. Third, the property rights involved are protected by the Fourteenth Amendment and this protection can neither be withdrawn nor interfered with by the governor, who has no authority to interfere with a federal court in the exercise of its powers. Fourth, this involves no impairment of proper state authority nor the governor's power to see that the laws are faithfully executed. His admitted power to deal with disorder and insurrection by military force gives him no blanket authority to enforce executive fiats affecting private property rights. The "allowable limits of military discretion" are judicial questions. In this instance the military power was employed, not to suppress an uprising (for no evidence of threatened violence appeared), but for the actual obstruction of orderly judicial process.

<sup>43</sup> 287 U.S. 378, 1932.

*c. Due Process and Public Utility Rates.* Of the cases involving the test of due process as applied to public utility rates, four may be mentioned. In *Los Angeles Gas & Electric Corporation v. Railroad Commission*,<sup>44</sup> a reduction in gas rates leaving a seven per cent return to the company was held non-confiscatory. In an opinion by Chief Justice Hughes, too elaborate for summary here, a careful analysis of the rate base used by the state commission was made and no reason found for setting it aside. There was evidence that the elements of historical cost, reproduction cost, going value, and depreciation had all entered into the estimates of the value of the company's property. The Court declined to insist upon any "artificial rule or formula" for determining this value as long as the pertinent elements had been given due consideration. In *Public Service Commission v. Great Northern Utilities Co.*,<sup>45</sup> the defendant had reduced its price for gas in a town of two thousand to a figure below the cost of production in order to drive a competing gas company out of business. It was held not to deny due process of law for the public service commission to raise this rate from 15 to 35 cents per thousand cubic feet, since it appeared that the low rate would result in losses impairing the defendant's ability to render dependable service. The company has no "constitutional right by unrestrained cutting of rates to destroy the competitor." In determining electric rates for a city, there is no denial of due process in using as the unit for rate-making the property employed in supplying electric current to the city alone, rather than the entire property and system of the company which supplies some 50 cities in 13 counties. A proper rate base is provided by adding the value of the local utility property and the proportionate share of the company's whole property which is fairly attributable to the service supplied the city. A return of seven per cent for the service is not confiscatory. This is the case of *Wabash Valley Electric Co. v. Young*.<sup>46</sup> In *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*,<sup>47</sup> there is held to be no denial of due process of law in a statute so construed as to authorize the state board of railroad commissioners to fix intrastate freight rates, and, upon a later finding that such rates were unduly high, to compel the railroad to refund to shippers the difference between the new and the old rates. Nor is their denial of due process in a decision of the state supreme court that the previous statutory construction permitting the retroactive application of the revised rates is erroneous and will not in the future be enforced, but that the overruled construction (requiring the payment of the refunds) will be applicable to all transactions down to the time of the new decision. The remarks of Mr. Justice Cardozo upon this last point illuminate the problem of the effect upon past transactions of overruling decisions.

<sup>44</sup> 289 U.S. 287, 1933.

<sup>45</sup> 289 U.S. 130, 1933.

<sup>46</sup> 287 U.S. 488, 1933.

<sup>47</sup> 287 U.S. 358, 1932.

*d. Due Process in Procedure.* While the final chapter in the "Scottsboro Case" has not yet been written, one important phase of it may be read in the Supreme Court's decision in *Powell v. Alabama*.<sup>48</sup> It was there held that seven negro boys had been denied due process of law because they had been convicted of a capital crime in a trial in which they had been deprived of the assistance of counsel. The Court's opinion, written by Mr. Justice Sutherland, falls into two main parts. In the first, the record is analyzed to determine whether there was, in fact, a denial of counsel to the defendants, and such denial is established. It appears that from the moment of their arrest until they were sentenced the accused were guarded closely by soldiers against a hostile community. Upon indictment, they were arraigned and pleaded guilty without the presence of friendly counsel and without inquiry as to whether they desired or were able to secure counsel. At that time the judge appointed "all the members of the bar" as counsel for the purpose of the arraignment. When their trial began six days later, no lawyer appeared for them, but a Mr. R. from Tennessee where the defendants had lived said he had been asked by those interested in the accused to be present and that he would be willing to assist such counsel as the court might appoint. After rather vague and confused colloquy, it seems to have been agreed that Mr. M., a member of the local bar, should assist Mr. R. The trial judge again suggested that all the members of the bar should assist, and the record does not make it clear upon whose shoulders the primary responsibility actually fell. No time was allowed for preparation of the case for the defense, and the appearance of counsel was "rather *pro forma* than zealous and active." It is apparent that the accused were not accorded in substance the customary right of counsel in their behalf.

The second part of the opinion proves that this denial of the right to counsel violates the due process clause of the Fourteenth Amendment. It is admitted that before the Declaration of Independence English law did not recognize the right of the accused to counsel, but it is emphasized that twelve of the thirteen colonies definitely established such right. The Court then turns to a more difficult problem. In *Hurtado v. California*,<sup>49</sup> it was held that the due process clause of the Fourteenth Amendment does not require a grand jury indictment as a prerequisite to trial for felony in a state court. This conclusion was supported by referring to the fact that the Fifth Amendment contains not only the due process clause, but also a specific guarantee of grand jury indictment. Since neither clause may be regarded as superfluous, it must follow that due process of law in the Fifth Amendment was not intended to include the requirement of grand jury indictment. Since the due process clauses of the Fifth and Fourteenth Amendments are interpreted identically, the latter amend-

<sup>48</sup> 287 U.S. 45, 1932.

<sup>49</sup> 110 U.S. 516, 1884.

ment does not impose the grand jury requirement upon the states as part of due process of law. By parity of reasoning, the same result might be reached with regard to the right to counsel. The specific guarantee of that right contained in the Sixth Amendment would negative the idea that the right was included within the due process guarantee of the Fifth Amendment, and consequently, the Fourteenth Amendment.

But this doctrine of the *Hurtado* case has not always been adhered to. It has been held, for example,<sup>50</sup> that taking private property for public use without just compensation violates the due process clause of the Fourteenth Amendment, although the Fifth Amendment, in addition to its due process clause, explicitly forbids such takings. And in *Near v. Minnesota*<sup>51</sup> freedom of speech and press were held to be comprised within the guarantee of due process of law, although protected by a special clause of the federal bill of rights. The rule by which these cases are to be distinguished from the *Hurtado* case is expressed by the Court as follows: "The fact that the right involved is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,' is obviously one of those compelling considerations which must prevail in determining whether it is embraced within the due process clause of the Fourteenth Amendment, although it be specifically dealt with in another part of the federal Constitution." There is no doubt that the right to counsel in a criminal trial is of this fundamental character. Consequently, the failure of the trial court to give the accused reasonable time and opportunity to secure counsel was a denial of due process, and in view of their obvious inability to secure such counsel, the court's failure to make an effective appointment of counsel was also a denial of due process.

e. *Due Process in Taxation.* An irrigation district issued bonds for irrigation purposes, and over a period of years the tracts of land comprised therein were assessed in proportion to estimated benefits to meet the accruing obligations. It is held in *Roberts v. Richland Irrigation District*<sup>52</sup> that there is no deprivation of property without due process of law in imposing upon a landowner within the district a further assessment, admittedly in excess of the actual benefits accruing to his land, in order to meet the deficiencies resulting from the failure of others to pay their assessments and thus make possible the payment of the bonds. Under the state law, all the lands within the district became generally liable for the payment of the bonds and interest. This general liability could be assessed in accordance with estimated benefits, just as it might be assessed in accordance with the actual value of the land. There is no necessity

<sup>50</sup> *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 1897.

<sup>51</sup> 283 U.S. 697, 1931. For comment, see this REVIEW, vol. 26, p. 270.

<sup>52</sup> 289 U.S. 71, 1933.

arising under the Fourteenth Amendment that the assessments be limited to the amount of the increased value of the land.

## *2. Equal Protection of the Laws*

In the case of Liggett Company v. Lee,<sup>53</sup> the Supreme Court invalidated several provisions of the Florida chain store tax and remanded to the supreme court of that state the question whether the void sections could be deleted without invalidating the whole statute. The decision in no way overrules or weakens the recent case of State Board of Tax Commissioners v. Jackson,<sup>54</sup> in which license taxes upon chain stores progressively increasing as the number of stores in the chain increased were held not to involve arbitrary classification for taxing purposes. The Florida tax followed the main principle of the Indiana act with one exception. A stated tax per store is levied upon any number of stores in the same ownership chain if they are located within the limits of the same county, but if one or more of them is located in a different county the tax is increased not only on those lying in the other counties, but upon all of the stores. In an opinion by Mr. Justice Roberts, who also wrote the opinion in the Jackson case, this classification based upon location of stores in one or more counties is arbitrary and "finds no foundation in reason or in any fact of business experience." It amounts, therefore, to a denial of the equal protection of the laws. Other questioned provisions of the act were sustained. These included authorization to counties and cities to impose graduated taxes of their own upon chain stores, the levying of higher taxes upon stocks of goods held by retailers than upon those held by wholesalers, and an exemption of gasoline filling stations from the provisions of the act. In an elaborate dissenting opinion, Mr. Justice Brandeis defends the validity of the provision held void by the Court. His view that the discrimination complained of is valid as applied to corporations (and this will be its only application in fact) gives him an opportunity to expound with characteristic fullness and acumen his philosophy as to the social and economic desirability of small business enterprises, the menace of unrestricted corporate growth, and the right of the state to use its taxing power as a weapon directed against excessive "bigness" in the field of corporate organization. The opinion is a document meriting close study. Justices Cardozo and Stone dissent upon the somewhat narrower grounds that the basis of the condemned classification is reasonable.

The familiar doctrine that a municipal corporation may not plead the protection of the Fourteenth Amendment against discriminatory or arbitrary legislation directed against it by the state is applied in Williams v. Baltimore.<sup>55</sup> Here a state statute had exempted for a period of not more than two years from all state, county, and municipal taxes the property

<sup>53</sup> 288 U.S. 517, 1933.

<sup>54</sup> 283 U.S. 527, 1931.

<sup>55</sup> 289 U.S. 36, 1933

of the Washington, Baltimore, and Annapolis Railroad Company. The city of Baltimore was held to have no rights under the equal protection clause of the Fourteenth Amendment against such state action. The exemption, being supported by public policy as a means of keeping alive a necessary public utility in serious financial straits, was found to violate no provision of the Maryland constitution.<sup>56</sup>

## II. STATE AND FEDERAL RELATIONS

### 1. *State Police Power and Interstate Commerce*

In *Mintz v. Baldwin*,<sup>57</sup> a New York State quarantine order was enforced against cattle brought by the plaintiff into the state from Wisconsin. The New York act permits such importation when the cattle have been certified by the state of origin not only to be free from Bang's disease, but also to have come from herds which are free from it. The plaintiff's shipment did not meet this latter requirement and was rejected. Bang's disease is a highly infectious cattle disease as a result of which undulant fever may be developed by human beings by drinking the milk of an infected cow. The plaintiff alleged the invalidity of the state's action on the ground that it violates the commerce clause by imposing burdens upon interstate commerce with respect to a field already occupied by federal quarantine regulation. The contention is rejected by the Court and the New York regulation sustained. Under the act of 1903 relating to animal quarantine, the Secretary of Agriculture is authorized to establish necessary regulations to prevent the spread of animal diseases. To this end he may establish a system of federal certification of cattle as free from disease, and in cases in which this is done the states are specifically barred from further regulation or from the barring of the certified animals. But this specific limitation on state power is interpreted as evidence of the intention of Congress not to trammel the enforcement of other state quarantine regulations not so forbidden. This view is supported by the action of the Department of Agriculture in informing the state authorities that it had imposed no federal quarantine covering Bang's disease, but was leaving that problem to be dealt with by the various states. It will be recalled that in *Oregon-Washington R. & Nav. Co. v. Washington*<sup>58</sup>

<sup>56</sup> *First National Bank v. Louisiana Tax Commission*, 289 U.S. 60, 1933, and *Union Bank & Trust Co. v. Phelps*, 288 U.S. 181, 1933, both involve questions of equal protection in the field of taxation, and also the application of the federal statutory prohibition against discriminatory taxation of the moneyed capital of national banks. In *Seaboard Air Line R. Co. v. Watson*, 287 U.S. 86, 1932, it is held that there is no violation of the equality clause of the Fourteenth Amendment in a state statute which creates presumptions of negligence against a railroad which are not put upon motor carriers or other litigants.

<sup>57</sup> 289 U.S. 346, 1933.

<sup>58</sup> 270 U.S. 87, 1926. For comment, see this REVIEW, vol. 21, p. 91.

it was held that a congressional delegation of power to the Secretary of Agriculture to establish regulations to prevent the spread of plant parasites and diseases in interstate commerce excluded the states from that field of control even though the secretary had not exercised the power given. That case is distinguished from the present one on the ground that the federal statute involved in the earlier case, in contrast to the act of 1903, was so worded as to indicate congressional intention to reserve the entire field of plant quarantine for federal control, to the exclusion of complementary state action.

The case of *Bradley v. Public Utilities Commission*<sup>59</sup> raised the issue whether a state may constitutionally deny a certificate of convenience and necessity to one seeking to engage in interstate commerce by operating motor vehicles as a common carrier, where the ground of the denial is the increase of the hazard to public safety resulting from traffic congestion on the route proposed to be used. The state's power is upheld by a unanimous Court. First, it appears that there is no specific denial of the right to engage in interstate commerce, but merely to operate over the specific route known as Route 20 from Cleveland to Flint, Michigan. It was not shown that there were not alternative routes available on which congestion did not exist. Secondly, in the absence of congressional control over interstate motor traffic, numerous and far-reaching state regulations affecting such interstate traffic have been upheld as reasonable protections to the public safety. The present state regulation merely adds a new item to this list, since "safety may require that no additional vehicle be admitted to the highway." The state's present purpose of promoting the public safety and its method of using congestion of the highway as the test in granting or withholding the authorization sought distinguishes this case from the earlier cases of *Buck v. Kuykendall*<sup>60</sup> and *Bush & Sons v. Maloy*,<sup>61</sup> where the certificates of convenience and necessity to engage in interstate commerce as motor carriers were denied in order to prevent competition with existing transportation facilities. The test in those cases was the adequacy of the existing facilities, and in the realm of interstate commerce the states have no power to exert control for that purpose. The promotion of safety in the earlier cases was purely incidental. In the present case, the finding of congestion on Route 20 is supported by evidence. No denial of the equal protection of the laws results from denying to the plaintiff the privileges not withheld from shipper-owners or from motor carriers licensed before the date of the plaintiff's application. The case indicates a wholesome willingness to support state regulation of all motor traffic necessary to the public interest pending such time as the

<sup>59</sup> 289 U.S. 92, 1933.

<sup>60</sup> 267 U.S. 307, 1925. For comment, see this REVIEW, vol. 20, p. 105.

<sup>61</sup> 267 U.S. 317, 1925.

federal government may assume direct responsibility over such portion of the traffic as may be interstate.

### *2. State Taxation and Interstate Commerce*

Two cases deal with the question whether a state may validly tax the storage within the state of gasoline subsequently used by its owners as the motive power in interstate commerce. The first of these is *Nashville, C. & St. L. R. Co. v. Wallace*,<sup>62</sup> which, in its aspects dealing with the declaratory judgment, has been discussed above.<sup>63</sup> A Tennessee tax of two cents per gallon was levied upon all gasoline stored within the state. The plaintiff railroad bought large quantities of gasoline outside the state, brought it in in its own tank cars, and stored it in its own tanks. None of it was sold, but all of it was subsequently withdrawn for use in interstate railway operation in Tennessee and neighboring states. The tax was attacked on the ground that the gasoline was still an article of interstate commerce since it was still in course of movement from points of origin to points outside the state, and on the further ground that the tax was levied upon the railroad's use of the gasoline in its business as an interstate carrier. On both grounds it is alleged to be an unconstitutional burden on interstate commerce. The validity of the tax was, however, upheld by the Supreme Court. It is first pointed out<sup>64</sup> that upon being unloaded and stored, the gasoline ceases to be an article of interstate commerce and becomes merged with the general mass of property in the state. Secondly, the tax is not a burden upon the subsequent interstate commerce in which it is used. While remaining in storage in the state, the gasoline is clearly taxable by the state as property. "The power to tax property, the sum of all the rights and powers incident to ownership, necessarily includes the power to tax its constituent elements." Hence the state may properly tax any right or power incident to the railroad's ownership of the gasoline which falls short of a direct burden upon its use in interstate commerce. The tax here is upon the powers of storage and withdrawal from storage, and these powers are both completely exercised before use in interstate commerce has begun. The tax therefore does not burden that commerce. A similar result is reached in *Edelman v. Boeing Air Transport*,<sup>64</sup> in which a Wyoming tax upon the "use" of gasoline in the state is held valid as applied to gasoline stored in the state by the transport company and subsequently used by it for the fueling of interstate planes. Storage in the state and later withdrawal from storage constitute "uses" within the meaning of the statute, and for the reasons outlined in the Tennessee case there is no burden imposed thereby upon interstate commerce.

<sup>62</sup> 288 U.S. 249, 1933.

<sup>63</sup> *Supra*, p. 47.

<sup>64</sup> 289 U.S. 249, 1933.

The familiar doctrine of *Brown v. Maryland*<sup>65</sup> is given a modern application in *Anglo-Chilean Nitrate Sales Corporation v. Alabama*.<sup>66</sup> The appellant, a New York corporation, qualified under the state law to do business in Alabama. It imported nitrate from Chile through the port of Mobile. The nitrate is stored in a public warehouse in Mobile in the original packages and is sold in those packages both within and without the state for cash which was immediately sent to New York. The company had no other capital or property in the state and did no other business therein. Under the provisions of a statute authorizing an annual franchise tax on foreign corporations of two dollars per thousand dollars of capital stock, the state assessed this amount upon each thousand dollars worth of nitrate stored in Mobile. By a divided court, it is held that the exaction of this tax amounts to a violation of the clause of the Constitution forbidding state imposts or duties upon imports or exports without congressional consent. As construed by the Alabama court, the statute imposes a tax not upon the right or privilege of doing business within the state, but upon the actual doing of business. The only business which the appellant does in Alabama is the business of importing nitrate into the state in the original packages and the subsequent selling of it in those packages. The right to import, which includes the right to sell the goods in the original packages while they remain the property of the importer, is not subject to state tax. The majority opinion is written by Mr. Justice Butler. A dissenting opinion was filed by Mr. Justice Cardozo, with whom Justices Brandeis and Stone concur. Their position is that the corporation had solicited and received from the state the right to do local business therein and that even though it had not availed itself of that privilege, it was reasonably obligated to pay a tax upon the enjoyment of it.

In *Detroit International Bridge Co. v. Corporation Tax Appeal Board*,<sup>67</sup> the bridge company sought to escape the payment of a state franchise tax upon its right to transact business in the state on the ground that it was engaged only in foreign commerce in its operation of the international bridge between Detroit and Ontario. Its claim to immunity was rejected, however, on the ground that its corporate charter contains a provision specifically authorizing it to engage in the business of buying and selling real and personal property in Michigan and elsewhere. Upon this right to do local business it may properly be required to pay a tax to the state.

### *3. State Taxation of Federal Instrumentalities*

In two cases, immunity from state taxation was unsuccessfully pleaded on the ground that the tax in question burdened instrumentalities of the

<sup>65</sup> 12 Wheaton 419, 1827.

<sup>66</sup> 288 U.S. 218, 1933.

<sup>67</sup> 287 U.S. 295, 1932.

federal government. In Indian Territory Illuminating Oil Co. v. Board of Equalization,<sup>68</sup> a state ad valorem tax on personal property is levied on oil owned by the petitioner which constitutes his share of the oil he had produced from restricted Indian lands in Oklahoma under leases approved by the Secretary of the Interior. The oil had been merged with other oil from commercial or unrestricted properties. At the time of its removal, the petitioner paid to the Indian owners a royalty upon the gross proceeds. The Indians do not own the oil taxed, nor will they receive any further royalty from it. The oil is held not to be so identified with the petitioner's functions as a government instrumentality as to entitle it to exemption. The case is distinguished from Jaybird Mining Co. v. Weir,<sup>69</sup> in which a tax upon ores mined from restricted Indian lands was held void on the ground that the tax was assessed on the ores in the mass before the Indian royalties had been segregated and paid. In the present case, Chief Justice Hughes declares: "There is a recognized distinction between a non-discriminatory tax upon the property of an agent of government, albeit the property is used in, or has relation to, the business of the agency—where there is only a remote, if any, influence upon the exercise of the functions of government—and a tax which is deemed to impose a direct burden upon the exertion of governmental powers."

In Broad River Power Co. v. Query,<sup>70</sup> the plaintiffs were engaged in generating electric current at a power plant constructed and operated under a license from the Federal Power Commission pursuant to the Federal Water Power Act. A South Carolina tax upon the production and sale of electric current is attacked as a denial of equal protection of the laws and as an unconstitutional tax on a federal agency. The validity of the tax is sustained. There is no arbitrary discrimination involved in taxing the production of electric current by water and steam power but not its production by other methods. It is a reasonable classification to single out for special levies the hydro-electric plants utilizing the waters of the state and their principal competitors. In generating and selling the current, the plaintiff is not acting as a federal agent. It enjoys a privilege from the federal government, but this is not a privilege to be exercised on behalf of or for the benefit of the federal government. The tax does not fall upon the license received from the government. "The tax is not upon the exertion of, and cannot be said to burden, any governmental function." This follows the same principle as that laid down in Fox Film Corporation v. Doyal.<sup>71</sup>

<sup>68</sup> 288 U.S. 325, 1933.

<sup>69</sup> 271 U.S. 609, 1926. For comment, see this REVIEW, vol. 21, p. 93.

<sup>70</sup> 288 U.S. 178, 1933.

<sup>71</sup> 286 U.S. 123, 1932. For comment, see this REVIEW, vol. 27, p. 56.

## AMERICAN GOVERNMENT AND POLITICS

First Session of the Seventy-third Congress, March 9, 1933, to June 16, 1933.<sup>1</sup> The meeting of the Seventy-third Congress five days after President Roosevelt's inauguration marked the twenty-fifth time in our history that a special session has been called. Critical times have been faced before and remedial measures found, but the hundred days of this session are unparalleled for the speed and discipline with which Congress was brought to face and finish its task, for the political adroitness and firmness of the presidential leadership, and for the extraordinary importance and far-reaching effects of the legislation enacted. With the substantive merits and contents of the measures passed we are not concerned here, but in this session the legislative process is as worthy of consideration as the legislative product.

That the President was prepared, if necessary, to upset the "normal balance of executive and legislative authority" he made clear in his inaugural address. The Chief Executive became the chief law-maker. He applied to Congress the "discipline and direction under leadership" that he saw demanded in the popular mandate of his election. Protests against the assumption of dictatorial powers were overridden by the necessity of "broad executive power" for meeting emergency conditions. The oft-reiterated challenge of unconstitutionality the President had sought to forestall when he said on assuming office: "Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form." As the session proceeded, many so-called "essential forms" became essentially empty formalities. The President had become a prime minister.

To the public's demand for action, and to the President's readiness to lead Congress, must be added that factor necessary for success—a majority party support in both houses; 312 Democrats to 117 Republicans and 5 Farmer-Laborites<sup>2</sup> assured an overwhelming majority in the House of Representatives. With the aid of the progressive western Republicans, the Democrats in the Senate had a safe working majority for most measures. There were 59 Democrats, 36 Republicans, and 1 Farmer-Laborite. A common party label was no guarantee of unquestioning loyalty from the rank and file, but it did give the President control of the party organization. He was thus able in large measure to direct the deliberations of Congress.

<sup>1</sup> For notes on the 72nd Congress, 2nd Session, see this REVIEW, Vol. 27, p. 404, and for the 1st Session, Vol. 26, p. 846. For notes prepared by Arthur W. Macmahon on the 71st Congress, see Vol. 24, pp. 38 and 913, and Vol. 25, p. 932. For notes on the 70th Congress, see Vol. 22, p. 650, and Vol. 23, p. 364; and on the 69th Congress, Vol. 20, p. 604, and Vol. 21, p. 297.

<sup>2</sup> There was one vacancy.

## PARTY ORGANIZATION IN THE SEVENTY-THIRD CONGRESS, SPECIAL SESSION

*House Democrats*

Rainey, H. T., Ill., Speaker  
 Byrns, J. W., Tenn., Majority Floor Leader  
 Cullen, T. H., N.Y., Assistant Majority Floor Leader  
 Greenwood, A. H., Ind., Whip  
 Pou, E. W., N.C., Chairman Rules Committee

## Assistant Whips (from regional districts):

Rogers, W. N., N. H.  
 Mead, J. M., N. Y.  
 Haines, Harry, Pa.  
 Flannagan, J. W., Jr., Va.  
 Green, R. A., Fla.  
 Monte, N. F., La.  
 Miller, J. E., Ark.  
 Randolph, Jennings, W. Va.  
 Weideman, C. M., Mich.  
 Parsons, C. V., Ill.  
 Biermann, Fred, Iowa  
 Johnson, Jed, Okla.  
 Johnson, L. A., Tex.  
 Lewis, Lawrence, Colo.  
 Lloyd, Wesley, Wash.

## Steering Committee:

Drewry, P. H., Va.  
 Rayburn, Sam, Tex.  
 Connery, W. P., Jr., Mass.  
 Boland, P. J., Pa.  
 Larrabee, W. H., Ind.  
 Hill, Lister, Ala.  
 Gregory, W. V., Ky.  
 Sabath, A. J., Ill.  
 Hastings, W. W., Okla.  
 Hill, S. B., Wash.  
 Cox, E. E., Ga.  
 Lozier, R. F., Mo.  
 Boylan, J. J., N. Y.  
 Taylor, E. T., Colo.  
 Pou, E. W., N. C.  
 Lea, C. F., Calif.  
 Crosser, Robert, Ohio

Committee on Committees:  
 Pou, E. W., N. C.  
 Bankhead, W. B., Ala.  
 O'Connor, J. J., N. Y.  
 Sabath, A. J., Ill.  
 Greenwood, A. H., Ind.  
 Cox, E. E., Ga.  
 Driver, W. J., Ark.  
 Smith, H. W., Va.

Lea, C. F., Calif., Chairman Democratic Caucus

*Senate Democrats*

Pittman, Key, Nev., President Pro Tem.  
 Robinson, J. T., Ark., Majority Floor Leader  
 Kendrick, J. B., Wyo., Assistant Majority Floor Leader  
 Lewis, J. H., Ill., Whip  
 Black, H. L., Ala., Secretary  
 Copeland, R. S., N. Y., Chairman Rules Committee

Steering Committee:  
 Robinson, J. T., Ark.  
 Fletcher, D. U., Fla.  
 Ashurst, H. F., Ariz.  
 Sheppard, Morris, Tex.  
 King, W. H., Utah  
 McKellar, Kenneth, Tenn.  
 George, W. F., Ga.  
 Copeland, R. S., N. Y.  
 Wheeler, B. K., Mont.  
 Bratton, S. G., N. Mex.  
 Tydings, M. E., Md.  
 Kendrick, J. B., Wyo., Ex off.  
 Lewis, J. H., Ill., Ex off.  
 Black, H. L., Ala., Ex off.  
 Smith, E. D., S. C.

*House Republicans*

Snell, B. H., N. Y., Minority Floor Leader  
 Englebright, H. L., Calif., Whip  
 Hooper, J. L., Mich., Assistant Whip  
 Martin, J. W., Mass., Assistant Whip  
 Wolfenden, James, Penn., Assistant Whip

## Steering Committee:

Darrow, G. P., Pa.  
 Treadway, A. T., Mass.  
 Cooper, J. G., Ohio  
 Britten, F. A., Ill.  
 Thurston, Lloyd, Iowa  
 Hope, C. R., Kans.  
 Carter, Vincent, Wyo.  
 Engelbright, H. L., Calif.  
 Ransley, H. C., Pa.  
 Martin, J. W., Jr., Mass.  
 Mapes, C. E., Mich.  
 Lehlbach, F. R., N. J.

## Committee on Committees:

Carter, A. E., Calif.  
 Merritt, Schuyler, Conn.  
 Britten, F. A., Ill.  
 Dowell, C. C., Iowa  
 Guyer, U. S., Kans.  
 Beedy, C. L., Me.  
 Treadway, A. T., Mass.  
 Mapes, C. E., Mich.  
 Knutson, Harold, Minn.  
 Tobey, C. H., N. H.  
 Bacharach, Isaac, N. J.  
 Parker, J. S., N. Y.  
 Sinclair, J. H., N. Dak.  
 Cooper, J. G., Ohio  
 Mott, J. W., Ore.  
 Darrow, G. P., Pa.  
 Taylor, J. W., Tenn.  
 Gibson, E. W., Vt.  
 Frear, J. A., Wis.  
 Carter, Vincent, Wyo.

Luce, Robert, Mass., Chairman Republican Conference

*Senate Republicans*

McNary, C. L., Ore., Minority Floor Leader  
 Fess, S. D., Ohio, Assistant Minority Floor Leader  
 Vandenburg, A. H., Mich., Whip

## Committee on Committees:

Reed, D. A., Pa., Chairman  
 Nye, G. P., N. Dak.  
 Capper, Arthur, Kans.  
 Hastings, D. O., Del.  
 Couzens, James, Mich.  
 Steiner, Frederick, Ore.  
 Hebert, Felix, R. I.  
 Patterson, R. C., Mo.  
 Carey, R. D., Wyo.

## Policy Committee:

Robinson, J. T., Ark.  
 Harrison, Pat, Miss.  
 Pittman, Key, Nev.  
 Glass, Carter, Va.  
 Walsh, D. I., Mass.  
 Dill, C. C., Wash.  
 Barkley, A. W., Ky.  
 Wagner, R. F., N. Y.  
 Connally, Tom, Tex.  
 Bulkley, R. J., Ohio  
 Byrnes, J. F., S. C.  
 Gore, T. P., Okla.  
 McAdoo, William G., Calif.

## Committee on Legislation:

Vandenburgh, A. H., Mich.  
 Goldsborough, P. E., Md.  
 Austin, W. R., Vt.  
 Townsend, J. G., Jr., Del.  
 Hatfield, H. D., W. Va.  
 Robinson, A. R., Ind.  
 Hale, Frederick, Me.  
 Johnson, H. W., Calif.  
 Dickinson, L. J., Iowa

## Patronage Committee:

Hayden, Carl, Ariz.  
 Barkley, A. W., Ky.  
 Pittman, Key, Nev.

## Patronage Committee:

Metcalf, J. H., R. I.  
 Keyes, H. W., N. H.  
 Frazier, L. J., N. Dak.

This was no small power as exercised by Mr. Roosevelt. He displayed remarkable skill in manipulating the attention of Congress and of the public. His messages to Congress were strategically timed and positive and specific in character. Disagreement with his proposals was interpreted by the general public as obstructionism. His swift pace, his boldness in assuming responsibility, and his definite recommendations not only stimulated popular support of his policy, but likewise branded as dissenters and critics congressmen holding to different policies. His radio talks to the nation served the double purpose of reassuring the people and breaking down resistance in Congress. Legislators were made only too well aware of the temper of their constituents.

Congressmen of both parties were willing to follow the President's lead, and he managed his congressional relations with great tact. At the end of the session, he was able to thank both houses for a "spirit of teamwork" between the legislative and executive branches that in most cases "transcended party lines" and made possible "more whole-hearted co-operation" than had been witnessed in "many a long year." Of course the pressure of the emergency and the solid public support behind the President must be understood as modifying normal relations, but even when this is allowed for a full weight of political sagacity remains to account for the satisfactory contacts with Congress.

*Party Organization.* The attitude of the Republicans was indicated when, following a caucus meeting on February 28, Floor Leader Snell declared: "Our policy will be to stand squarely behind the Democratic Administration in support of legislation to better conditions." Symptomatic of the temper of Republicans in the Senate was their refusal to support Senator Reed's proposal that they bar from committee assignments those who bolted the Hoover ticket. They had no mind to excommunicate Johnson, Cutting, LaFollette, and Norris.

The Democrats in the Senate set up their steering committee, and also the policy committee which was now established as a permanent body. It was in the House, however, that the most interesting develop-

ments took place. The organization of the party here was the result of a "trade" among rival aspirants for office. Before the caucus met on March 2, an "understanding" had been arranged among the several candidates for the speakership. John McDuffie of Alabama, the chief contender that Henry T. Rainey of Illinois had to face, was disposed of by an agreement among his rivals. Joseph W. Byrns of Tennessee withdrew in favor of Rainey, thereby gaining the latter's support in winning the floor leadership. The New York delegation lent its aid to Byrns and Rainey when the Tammany candidate for speaker was made assistant floor leader. Texas brought its bloc of votes to aid the "combine" when Byrns supported James P. Buchanan of Texas as his successor to the chairmanship of the Appropriations Committee. McDuffie was replaced as party whip by Arthur H. Greenwood of Indiana, and a Californian, Clarence F. Lea, was elected permanent chairman of the Democratic caucus.

Could the nation-wide Democratic strength be consolidated in the organization of the House? Party positions of strategic importance were distributed among leaders from pivotal states. Support from the Ohio and New York delegations helped elect as speaker the first northern Democrat in over fifty years. The vote was 166 to 112. Discontent had been expressed with the alleged disproportionate influence of southern members, and in the last congress concessions were made to Tammany in committee assignments. Speaker Garner, it was thought, had not consulted the Democratic membership, and dissatisfaction with his policy strengthened the opposition to McDuffie. A markedly different attitude was taken by the new leadership.

They professed a desire to secure the free coöperation of the members. If the Democratic majority of 191 was to prove effective, harmony was necessary. Yet the presence of over 150 new members, bringing novel proposals for national salvation and knowing little of legislative problems, complicated the situation. The critical economic conditions made it essential that the House be organized for prompt and united action and that it respond to the leaders. The caucus helped to answer this need. It was useful in canvassing opinions, but the wide numerical margin of the majority party made severe regimentation avoidable in many individual cases.

The creation of a Democratic steering committee was forecast by the election of Speaker Rainey. Garner had opposed a steering committee as an undesirable limitation on his powers. Disagreement on this point appeared in the last Congress. Rainey's advocacy of this committee was considered a leading factor in his selection as speaker, particularly in view of the large number of Democrats coming from states previously Republican. The House was organized on an entirely new basis, in the opinion of the new speaker. The object of this innovation was to keep the

party together and to ascertain the degree of party support for the Democratic program. "It is a long step forward," Rainey declared, "and it takes from the speaker power he has arbitrarily exercised and gives it back to the House. Failures in the last Congress have been due to the fact that the determination of policies has come entirely from the speaker's chair; it will now come from the party. We will put over Mr. Roosevelt's program."

Unwittingly, the speaker seemed to touch the significant factor in the scheme of Democratic organization. The possible contradiction of party policies and presidential program was resolved by the speaker's easy identification of the two. Independent party leadership among the House Democrats was rendered well-nigh impossible by the plan of party organization. Responsibility for control was lost in the search for harmony. The President stood clear of this intertwining confusion of party agencies. The system was well adapted to carrying out his commands, but poorly devised for independent control by the party officials in the legislature.

The steering committee was composed of one representative each for the 15 districts into which the country was divided.<sup>2</sup> As ex-officio members were added the speaker, the whip, the majority floor leader, and the chairman of the caucus. The delegations from a given district elected one of their number to represent them on the steering committee. Since the speaker had sponsored the establishment of this committee, he could not very well ignore its existence or attempt to override it. Yet coherent steering could not be attempted with 19 pilots at the helm.

That the party organization was better designed for carrying out orders from above than for initiating policies was emphasized by the increased importance of the whips. Especially did the new members need direction and advice. Chief Whip Greenwood accordingly named assistant whips for the regional divisions identical with the steering committee districts. These lieutenants were liaison officers between the party officials and the Democratic delegations from the states in their district. Each whip was answerable for the members of the party from his region. The chief whip consulted regularly with the speaker and the floor leader and met with the steering committee; he instructed his assistants at weekly conferences. The whip characterized his task as one of "benevolent persuasion." The great party majority permitted him on occasion to relax

<sup>2</sup> These districts, with their representatives, were as follows: (1) Me., N. H., Vt., Mass., R. I., Conn.—*Connery*; (2) N. Y.—*Boylan*; (3) Pa., N. J., Del.—*Boland*; (4) Va., Md., N. C.—*Drewry*; (5) S. C., Ga., Fla.—*Cox*; (6) Ala., Miss., La.—*Hill*; (7) Ky., Tenn., Ark.—*Gregory*; (8) O., W. Va.—*Crane*; (9) Mich., Ind.—*Larrabee*; (10) Wis., Ill., Sabath; (11) Mo., Ia., Minn.—*Lozier*; (12) Kan., Neb., N. D., S. D., Okla.—*Hastings*; (13) Tex.—*Rayburn*; (14) Colo., Mon., Ida., Utah, Wyo., Nev., Ariz., N. Mex.—*Taylor*; (15) Wash., Ore., Cal.—*Hill*.

discipline where a congressman had made prior commitments. Here was a systematic arrangement for passing along orders, for checking votes and attendance, and for canvassing the opinions of the members.<sup>3</sup>

The Democrats thus developed in this Congress an elaborate structure for party control, but placed no one at the top. The more separate agencies were set up, the less likely was unified and responsible action, since no principle of hierarchy established a definite relationship of subordination to leadership. Members attempted to commit the party by working through the caucus. The steering committee, ostensibly representative, was an intermediary between caucus and leaders. Symbolizing a transfer of powers from the speaker to the members, the committee was not properly composed for executive action. Its functions became "advisory." Those holding the titular positions of command in the party organization attained to office by a close trade rather than a clear victory. They exhibited their power through control of legislative procedure rather than through their influence over their fellows.

Party control in this Congress must be discussed in terms of presidential leadership. It was well that the President's wishes and the party program were regarded as identical in the minds of Rainey and his confrères. His authority to dictate policy was unquestioned and the machinery for aligning the members behind his measures fortunately was at hand.

The critical tension of the banking crisis made it imperative at the very first meeting of the new Congress that the President's guidance be accepted without hesitation. Majority Floor Leader Byrns, requesting "unanimous consent," introduced the emergency banking act with debate limited to 40 minutes. Minority Floor Leader Snell stated: "The house is burning down, and the President of the United States says this is the way to put out the fire." He asked for Republican support. The House had not yet adopted rules of procedure; the bill was not available in printed form; the members were acquainted with its contents by the reading clerk. But leaders of the House and Senate had met with the President the night before and had promised to expedite the measure. The bill passed the House without a record vote, received the approval of the Senate a few hours later, and was promulgated by the Chief Executive the same evening.

The next morning, March 10, the House received the President's message requesting authority for making drastic economies by cuts in the salaries of government employees and in the compensation of ex-service

<sup>3</sup> Minority Floor Leader Snell named a steering committee on March 25 and retained intact his system of chief whip, assistant whips, and "key men" in each delegation. Keeping the steering committee in operation when in the minority was an innovation.

men.<sup>4</sup> "For three long years the Federal government has been on the road toward bankruptcy," the President stated. "For the fiscal year 1934, based on the appropriation bills passed by the last Congress and the estimated revenues, the deficit will probably exceed \$1,000,000,000 unless immediate action is taken." On proposal of the majority floor leader, a special economy committee was created to act upon the President's message for the sake of "quick action" and to avoid waiting until the formation of the standing committees. The reports of this committee were given privileged status, and its jurisdiction was limited to the President's economy proposals.

But the Democratic rank and file likewise wished to discuss fiscal policy. "I wish respectfully to suggest to our leader," said Representative Woodrum, . . . that he take the whole matter of the President's message into our family caucus and let us very frankly and freely consider it and discuss it." The caucus met the next morning and trouble began. The leaders were divided among themselves. Speaker Rainey was unable to align two-thirds of the members behind the President's economy bill, and it was with difficulty that the caucus was kept from agreeing to support the Browning amendment, a measure designed to emasculate the economy program. Immediately following this heated caucus, which ended in discord, the measure came before the House.

Despite the rebellious faction within their party, the leaders desired to pass the bill at once. In the caucus they had only their influence, but in the House they had more effective weapons. There, strong psychological conditions were in their favor, and a different atmosphere prevailed. Democrats who had viewed the bill unfavorably in secret caucus changed their viewpoint in the open debate, and the Democratic leaders found their hands strengthened by Republican support and by public approbation of the Administration's position. "When the *Congressional Record* goes to President Roosevelt's desk in the morning," one of them asserted, "he will look over the roll call we are about to take, and I warn you new Democrats to be careful where your names are found." Hisses and groans greeted this admonition, but the point struck home.

The party leaders had a more tangible weapon in their control over procedure, and they used it with great skill. A special rule for bringing up the economy measure was inexpedient because such a rule must "lie over" a day unless passed by a two-thirds vote, and such a majority was lacking. The House parliamentarian advised the leaders that the desired immediate action could be had, strangely enough, by simply following the "regular order." This was possible since the calendars were clear, no standing committees had been appointed, and there was no business

<sup>4</sup> A recapitulation of appropriations is omitted for lack of space. For statistics, consult Sen. Doc. 35, 73rd Cong., 1st Sess., pp. 600-602, 672-678.

before the House wherewith obstructionists could effectively delay action. This procedure was a masterpiece of simplicity and directness without precedent in Congress in many years. After the opening prayer and approval of the minutes, the House proceeded at once to the orders of the day. The floor leader introduced a resolution providing that debate on the economy bill be limited to two hours and ruling out amendments. It was hoped that the amendment that had disrupted the caucus could thus be kept out of the House. Representative Browning proved too experienced a parliamentarian to be thrust aside so easily. He saw that even under the resolution it would be in order for an opponent of the bill to offer a motion to recommit the bill to committee. An opening for amending the measure appeared in possible instructions to this committee. It was up to the Democratic leaders to forestall Representative Browning. How could the leader of the pro-veteran rebels be prevented from crippling the economy bill by his limiting amendment? A loophole was seen in a motion sponsored by Representative Connery of Massachusetts. This champion of the veterans wished to kill the economy bill entirely by returning it to committee without instructions. The leaders grasped this slender chance, for Connery's motion made possible a vote to recommit *without any modifying amendment*. The speaker used his right to recognize with decisive effect. Connery was called upon, Browning ignored. When the latter insisted that his amendment deserved recognition "after what occurred in the caucus this morning," the speaker coldly rejoined that the House had no knowledge of the caucus.

Many others were likewise willing to forget that disrupted party meeting. The Connery motion was defeated (ayes 90, noes 272) as the leaders had anticipated, and a roll call was at once requested on the bill, despite a roar of Democratic protest. The measure was passed by 266 (Dem. 197, Rep. 69) to 138 (Dem. 92, Rep. 41, F.-L. 5). Among the Democrats voting against the bill were the assistant floor leader, two members of the steering committee, and four of the party whips. If the Republicans had not crossed the aisle to support the President, his bill would have faced defeat.

Despite support from the President, the public, and even the opposition party, the party leaders had to exercise all their ingenuity in parliamentary procedure to put their measure through. A special rule, the right of recognition, and a roll-call of names helped to out-maneuver the veterans' *bloc* in the House and frustrate the demands of this special interest. Income tax payments, moreover, were just falling due, and the public desire for genuine economies in government was evident. On Sunday, March 12, the President made an effective appeal to the nation over the radio, and Congress was held under close scrutiny.

When the economy bill was reported to the upper house on Monday,

after a bitter struggle in the Finance Committee, senators took the opportunity to make general acknowledgments of letters too numerous to be handled by their clerical forces. "Bear in mind that the vast army comprising the unorganized majority is thoroughly aroused over reckless government expenditures and will not tolerate submission to organized minority groups." This quotation from one such message reflected the tenor of many others.

The American Legion did not give up the fight, but offered to accept a flat 25 per cent reduction in veterans' compensation. Senate leaders saw in this proposal an attempt to revive the Browning amendment and force a compromise. They were aware that the propaganda mills were grinding as the telegrams poured into their offices. As a protection from this lobbying, some senators insisted upon being bound to support the bill by a caucus vote. But the caucus, while endorsing the bill, declined to be bound against amendments. This gave the obstructionists their chance, and a long debate resulted. The opposition came not from the Republican leaders, but from a *bloc*, and the delay was vigorously deplored in view of the critical state of the government's finances. The granting of dictatorial powers to the President was defended on the ground that "Congress had abdicated its functions by its failure to act." The worst political crime of the time was inaction.

The President saw this and skillfully used it as a lever to move Congress. The very day on which the Senate was to consider the economy bill, he sent his brief, dramatic message recommending immediate modification of the Volstead Act. The public demand for economy was excelled only by its thirst for beer. The pressure upon the Senate for early action was more than that dilatory body could withstand. Two days after its introduction, the economy bill was passed, and on the day following beer was legalized.

The House, torn by the party disagreement over the veterans' reductions, came together behind the terse beer message so clearly based upon the Democratic platform pledge. The President displayed his shrewd political sense by uniting his party at once upon this popular measure. House leaders were planning to adjourn and await the Senate's action on the economy bill when a telephone call from the White House apprised Speaker Rainey of the President's message. The air was cleared and the congressmen voted with alacrity.

*The President's Program.* Under the duress of crisis, the President had seen three important enactments completed in record time. But the pace was bound to slacken. On March 20, aroused by increasing opposition to the farm relief bill and by uneasiness in Congress over the contemplated program of permanent legislation, the Chief Executive invited leaders of both parties to a "friendly chat" at the White House. Measures relating

to the railroads, banking, power, and farm relief were discussed. The director of the budget, and the chairman of the Interstate Commerce Commission participated, together with chairmen of important congressional committees. Minority party leaders from both houses were present, as well as their colleagues of the majority side. This was but one of many meetings in which the Chief Executive brought administrative and legislative leaders together. Consultation with Republicans was, however, exceptional, and members of the minority party were generally uninformed as to the Administration's plans. The President worked in very close touch with Democratic leaders throughout the session and kept them fully informed as to his position on pending legislation. When a message was read to Congress, an administrative spokesman had ready for immediate presentation a bill covering the proposals made. No major question was raised without concrete recommendations being offered.

Presidential planning meant considering in turn the pressing needs of particular classes and industries. After the banking crisis had been met, an economy program agreed upon, and the Volstead Act amended, the problems of agricultural distress and unemployment were faced. The President put through an emergency farm mortgage act to provide for refinancing and a farm relief bill to control the production and price of important agricultural commodities. He recommended federal grants to the states for direct unemployment relief, and Congress authorized the Reconstruction Finance Corporation to make available \$500,000,000 through the Federal Emergency Relief Administration. A bill establishing a civilian conservation corps was passed through Congress in ten days and without a record vote. The two-year limitations in both of these enactments indicated their emergency character. In the Wagner bill, sponsored by Secretary of Labor Perkins, a United States employment service was established as a regular division of the Department of Labor. A bill providing for federal supervision of interstate traffic in investment securities was recommended by the President as "but one step in our broad purpose of protecting investors and depositors."

In a message of May 4, the President urged emergency railroad legislation whereby a coördinator of transportation would be authorized to "encourage, promote, or require action on the part of carriers, in order to avoid duplications of service, prevent waste, and encourage financial re-organizations." Mr. Roosevelt recommended repeal of the recapture provisions of the 1920 Transportation Act and the regulation of railway holding companies by the I.C.C. A bill combining emergency measures with permanent legislation passed Congress without a record vote, and with a one-year limitation on the emergency provisions. Experience gained under this plan of coördination, the President thought, would "greatly assist the government and the carriers in preparation of a more comprehensive

national transportation policy at the regular session of Congress in 1934." It is noteworthy how schemes for immediate relief were joined with more far-reaching plans and the impetus of the emergency used to initiate policies of future significance. Measures were put through this Congress with little difficulty that had been turned down repeatedly in previous sessions. Establishing the Tennessee Valley Authority for Muscle Shoals is a case in point. In bringing this proposal before Congress, the President stressed the need for broad social planning. "It is time," he wrote, "to extend planning to a wider field, in this instance comprehending in our one great project many states directly concerned with the basin of one of our greatest rivers. If we are successful here, we can march on, step by step, in a like development of other great natural territorial units within our borders." Three days later, the President was suggesting emergency legislation to protect small home owners from foreclosure. While Mr. Roosevelt's "planning" appeared opportunistic in the miscellaneous assortment of his measures, and in the need of the hour which dictated them, more legislation with long-term significance was enacted under the pressure of emergency need than Congress seemed to realize.

The following table indicates the promptness with which Congress acted upon the President's proposals. The only important bill enacted during the session which did not originate in the White House was the Glass-Steagall banking act.

<i>Number of bill</i>	<i>Title</i>	<i>Proposed by President</i>	<i>Passed House</i>	<i>Passed Senate</i>	<i>Date approved</i>	<i>No. of law or resolu- tion</i>	<i>Hours of general debate in House</i>
H. R. 1491	Emergency banking relief...	Mar. 9	Mar. 9	Mar. 9	Mar. 9	1	40 min.
H. R. 2820	Maintenance of government's credit (economy bill)....	Mar. 10	Mar. 11	Mar. 15	Mar. 20	2	
H. R. 3341	Permit and tax beer.....	Mar. 13	Mar. 14	Mar. 16	Mar. 22	3	
H. R. 3835	Emergency agricultural relief; farm mortgage; currency issuance and regulation.....	Mar. 16	Mar. 22	Apr. 28	May 12	10	5½
S. 598	Unemployment relief (reforestation).....	Mar. 21	Mar. 29	Mar. 28	Mar. 31	5	5
H. R. 4606	Federal emergency relief....	Mar. 21	Apr. 21	May 1	May 12	15	2
H. R. 5980	Supervision of traffic in securities.....	Mar. 29	May 5	May 8	May 27	22	5
H. R. 5081	Muscle Shoals and Tennessee Valley Authority.....	Apr. 10	Apr. 25	May 3	May 18	17	6
H. R. 5240 S. 1580	Relief of small home owners. Railroad reorganization and relief.....	Apr. 13	Apr. 28	June 5	June 13	43	1½
H. R. 5755	Industrial recovery; public construction and taxation....	May 4	June 5	May 27	June 16	68	3
		May 17	May 26	June 9	June 16	67	6

In the case of the farm relief bill, the President suggested farm mortgage relief on April 3, and on April 19 he brought forward his inflation proposal. He proposed federal control of the oil industry on May 20, and invalidation of the gold clause on May 26.

The Rules Committee held the House to the strictest limitations in discussing legislation. Special rules directed the consideration of all the important legislation of the session except for the extraordinary procedure provided for the emergency banking and economy acts. A sense of griev-

ance among the members was voiced in complaints that the Rules Committee treated the membership without courtesy or consideration; that committees reported bills without critical deliberation; that members were expected to vote upon measures when no printed copies were available, for study, and when even those sponsoring a measure could not adequately explain the terms of their bill; and that the leaders, when the House was organized, had promised to give the membership an opportunity to participate in the direction of policy and had failed to do so. "Now," asserted one member, "we are nothing but rubber stamps!"

Actual rebellion against this tight party control appeared when the leaders suggested abrogating the liberal discharge rule. Fifty-nine Democrats, including the leaders of the inflation and veterans' bonus *blocs*, held a rump caucus to protest against changing the rule. Party leaders were confident that they could secure enough votes to raise the required number of signatures on a discharge petition from 145 to 218. They could thus prevent a minority from bringing up for discussion issues embarrassing to the administration. The protestors withdrew when they saw the determined disapproval of the leaders. The latter decided not to force the issue, although they had enough votes to change the rule. "As a matter of fact," said Speaker Rainey, "the minute anybody starts a discharge petition, we can have the committee bring in the bill with an adverse report, and that will end it." The appearance of harmony was restored within the party. It was more important to strive for agreement upon the legislation pending than to start a fight over rules. Despite occasional complaints, the Democratic majority supported all the Administration's bills in the House. The table on the opposite page reveals the political alignment on important measures when roll calls were taken.

Much partisan disagreement occurred over invalidation of the gold clause, inflation, and farm relief. In fact, a good deal of light is cast upon the legislative process in this Congress by following the course of the farm relief bill. This measure was drafted in accordance with principles set forth by spokesmen for leading farm organizations. The President consulted with the Secretary of Agriculture and the chairmen of the House and Senate committees on agriculture. Secretary Wallace conferred at length with agricultural leaders and with the processors of farm products. The bill was written by the President's advisers, guided in large part by these conferences. The presidential office offered enough "resistance" to serve as a rallying point. Compromises among conflicting interests were made here. It was feared that Congress would give way to the demands made by opposing forces, with resultant delay and confusion. Through the Chief Executive, ideas could be gathered, differences adjusted, and support focussed upon a definite line of policy. The duty of Congress was to follow, not to interfere.

The farm relief bill was brought forward under the jurisdiction of the Rules Committee. Four hours of debate were allowed, but all points of order against the bill were waived and any amendment prohibited. Minority Floor Leader Snell complained ruefully: "There has always been a sugar coating on any rule that I ever brought in." The Democrats pointed out that their knowledge of "gag rules" had been gained under Republican tutelage. The measure was frankly jammed through the House, and congressmen were requested not to tamper.

## PRINCIPAL RECORD VOTES IN HOUSE

<i>Subject</i>	<i>Designa-</i> <i>tion</i>	<i>Date</i>	<i>Total vote</i> (including <i>Farmer-</i> <i>Labor</i> )	<i>Democ-</i> <i>ra tic</i> <i>vote</i>	<i>Repub-</i> <i>lican</i> <i>vote</i>
			<i>Yea-Nay</i>	<i>Yea-Nay</i>	<i>Yea-Nay</i>
<i>Bills:</i>					
1. Provision for general governmental economies (Economy bill) . . . . .	HR 2820	Mar. 11	266-138	197-92	69-41
2. Legalization and taxation of beer (Beer bill) . . . . .	HR 3341	Mar. 14	316- 97	238-58	73-39
3. Provision for farm aid, mortgage refinancing, and inflation (Agricultural Adjustment bill) . . . . .	HR 3835	Mar. 22	315- 98	272-24	39-73
4. Provision for direct unemployment relief (Emergency Relief bill) . . . . .	HR 4606	Apr. 21	331- 42	252-12	74-30
5. Operation of Muscle Shoals and development of Tennessee Valley Original bill . . . . .	HR 5081	Apr. 25	306- 91	284- 2	17-89
Conference report . . . . .	HR 5081	May 17	259-112	245-28	11-84
6. Provision for public works and industrial control (Industrial Recovery bill) . . . . .	HR 5755	May 26	325- 76	267-25	54-50
7. Continuation of gasoline tax, reduction of postage, and change in electricity tax . . . . .	HR 5080	Apr. 20	313- 45	256- 0	53-45
8. Appropriation for emergency projects (Fourth Deficiency bill) . . . . .	HR 6034	June 10	287- 84	258- 8	24-76
<i>Resolutions:</i>					
1. Grant to President of arms embargo power . . . . .	HJ Res. 93	Apr. 17	253-109	243-22	9-83
2. Invalidation of gold standard clause . . . . .	HJ Res. 192	May 29	283- 57	250- 9	28-48
<i>Amendments:</i>					
1. Elimination of Civil Service requirement (Emergency Relief bill) . . . . .		Apr. 21	215-161	215-51	0-105
2. Inflation of currency (Agricultural Adjustment bill) . . . . .		May 3	307- 86	273- 7	30-79
3. Provision for price-fixing at cost of production (Agricultural Adjustment bill) . . . . .		May 9	109-283	82-201	22-82
4. Imposition of 2½ per cent sales tax (Industrial Recovery bill) . . . . .		May 26	137-265	64-228	73-32
5. Exemption of publicly-owned power plants from electricity tax (Gas Tax bill) . . . . .		June 9	196-181	155-113	36-68
6. Provision for moderate increases in veterans' compensation (Independent Offices Appropriation bill) . . . . .		June 10	243-154	218-69	25-80
7. Application of gold clause invalidation to future contracts only (Gold clause resolution) . . . . .		May 29	78-263	15-244	63-14
<i>Motion:</i>					
1. Recommitment of Municipal Bankruptcy bill (HR 5950) . . . . .		June 9	172-191	83-175	86-15

Complaints of dictatorship were raised more often against the strict control of the legislative process than over the grant of wide powers to the Chief Executive. "A few days ago we gave the power of dictatorship to the President of this nation over the bankers of the country," remarked Representative Fuller. "Why should we refuse a dictatorship to the Secretary of Agriculture under the leadership of this same President for the farming industry of the country?" But many members were irked by the slight influence upon legislation permitted them. "It seems that our only

function here in the House is to act as "yes men," plaintively remarked a Kansan Throttlebottom. The bill passed the House on March 22. According to Representative Wadsworth, it passed through the House as through a funnel, with the task of careful consideration left to the Senate. "The idea of voting for anything in the House with the hope that it will be perfected in another body does not appeal to me," another congressman complained.

The Senate was not so amenable as the House, and in the debate on the farm relief bill serious disagreement appeared. Attempts were made to extend the provisions of the bill to other than staple products, to provide for veteran payments, and to remonetize silver. Contrary to administration policy, the Senate included a cost-of-production scheme for protecting the price of certain enumerated farm commodities. Democratic senators divided 28 to 27 in favor of this provision, which was later reluctantly withdrawn in conference after the House had voted to stand by the Secretary of Agriculture in his opposition to the plan. The Democrats again split on an amendment offered by Senator Wheeler calling for the 16 to 1 coinage of silver. They voted for the measure by 25 to 23, and the Senate, on April 17, voted down the amendment by the relatively narrow margin of 33 to 43. Apparently, the inflation issue had to be faced. It seemed clear that unless the President acted, Congress was likely to pass an inflationary measure—a move which might not only be harmful in itself, but damaging to the prestige of the Administration.

Such developments were forestalled by the President's recommendation of "controlled inflation" and the gold embargo of April 19. Embodied in the Thomas amendment to the farm relief bill, the inflationary measure absorbed the various proposals made and then left within the discretion of the President the alternatives that might be used. Opposition was disarmed, yet the Chief Executive was not committed to the views of any one *bloc*. The wide discretionary powers granted him were permissive, not mandatory. The Democrats were brought together behind the President's stand and supported the Thomas amendment 50 to 3. The Republicans opposed both inflation and the farm relief bill. The only effective criticism of the Administration came from the Senate.

As the next table shows, party control in the Senate was far less effective than in the lower chamber. Democratic majorities voted for several measures which were opposed by the President or which lacked his support. The Black 30-hour week bill, the LaFollette income tax publicity amendment, and the amendment on taxation of tax-exempt securities are examples. The contrast between the two houses is heightened if we examine the struggle over industrial recovery and veterans' compensation.

On May 17, the President recommended the "two steps toward putting people to work" that ushered in the National Industrial Recovery Act.

## PRINCIPAL RECORD VOTES IN SENATE

Subject	Designa-tion	Date	Total vote (including Farmer- Labor)	Democ-rat- ic vote	Repub- lican vote
<i>Bills:</i>					
1. Provision for emergency bank relief and gold embargo.....	HR 1491	Mar. 9	73- 7	51- 1	22- 5
2. Provision for general governmental economies (Economy bill).....	HR 2820	Mar. 15	62-13	43- 4	19-19
3. Legalization and taxation of beer (Beer bill) Original bill.....	HR 3341	Mar. 16	43-30	31-13	12-17
Conference report.....	HR 3341	Mar. 20	43-36	33-19	10-17
4. Provision for direct unemployment relief (Emergency Relief bill).....	HR 4606	Mar. 30	55-17	42-2	12-15
5. Provision for 30-hour week in industry (Black bill).....	S 158	Apr. 6	53-30	41-1.0	11-20
6. Operation of Muscle Shoals and development of Tennessee Valley.....	HE 5081	May 3	63-20	48- 3	14-17
7. Provision for farm aid, mortgage refinancing, and inflation (Agricultural Adjustment bill) Original bill (farm aid only).....	HR 3835	Apr. 28	64-20	48- 4	15-18
Conference report.....	HR 3835	May 10	53-28	39-11	13-17
8. Provision for public works and industrial control (Industrial Recovery bill) Original bill.....	HR 5755	June 9	58-24	47- 4	10-20
Conference report.....	HR 5755	June 13	46-39	41-15	5-23
<i>Resolution:</i>					
1. Invalidation of gold standard clause.....	HJRes.192	June 4	48-20	43- 2	4-18
<i>Article of Impeachment:</i>					
1. Conviction of Judge Louderback (if necessary).....		May 24	45-34	38-12	6-22
<i>Amendments:</i>					
1. Exemption of salaries under \$1000 from cuts (Economy bill).....		Mar. 15	32-42	18-27	14-15
2. Limitation of veterans' cuts to 25 per cent (Economy bill).....		Mar. 15	28-45	17-27	11-18
3. Prohibition of radio beer advertising (Beer bill).....		Mar. 16	36-38	19-26	17-12
4. Prohibition of sale of beer to persons under 16 (Beer bill).....		Mar. 16	50-23	26-17	24- 6
5. Provision for price-fixing at cost of production (Agricultural Adjustment bill).....		Apr. 13	47-41	28-27	18-14
6. Provision for 16-1 coinage of silver (Agricultural Adjustment bill).....		Apr. 17	33-43	25-23	7-20
7. Placement of embargo on goods landed below U. S. cost (Agricultural Adjustment bill).....		Apr. 19	28-50	2-44	25-6
8. Inflation of currency (Agricultural Adjustment bill).....		Apr. 28	64-21	50- 3	13-18
9. Payment of bonus to veterans (Agricultural Adjustment bill).....		Apr. 28	28-60	17-39	10-21
10. Recession from stand on "cost of production" plan (Agricultural Adjustment bill).....		May 10	48-33	30-21	18-11
11. Increase of income taxes on higher incomes (Gas Tax bill).....		May 12	14-50	10-33	3-17
12. Elimination of industrial licensing clause (Industrial Recovery bill).....		June 8	31-58	8-48	23- 9
13. Grant to President of power to restrict imports hampering recovery plan (Industrial Recovery bill).....		June 8	59-12	33-11	25- 1
14. Imposition of 1½ per cent sales tax (Industrial Recovery bill).....		June 9	28-57	9-45	19-11
15. Provision for publicity for income tax returns (Industrial Recovery bill).....		June 9	56-27	42-10	13-17
16. Taxation of tax-exempt securities (Industrial Recovery bill).....		June 9	45-37	32-20	12-17
17. Exemption of publicly-owned power plants from electricity tax (Gas Tax bill).....		May 11	45-31	32-16	12-15
18. Cancellation of power granted President to eliminate subsidies (Ind. Offices Appro. bill).....		May 31	28-35	8-30	20- 4
19. Limitation of certain veterans' cuts to 25 per cent (Independent Offices Appropriation bill).....		June 2	43-42	39-16	4-25
20. Restore additional veterans' compensation (Ind. Offices Appro. bill).....		June 14	51-39	19-39	31- 0
21. Provision for moderate increases in veterans' compensation (Ind. Offices Appro. bill).....		June 15	45-36	45- 8	0-27

The first was that Congress provide the machinery necessary for a great coöperative movement throughout industry "to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disastrous over-production." The second proposal was a grant of full power to the Chief Executive to start a large program of direct employment through a public works program. These ideas were not unfamiliar to Congress. The Senate had accepted a proposal of Senator Black for a 30-hour week, and the House had been considering suggestions of Secretary Perkins for limiting the hours of labor and fixing a minimum wage.

When the National Recovery Act was before the House, an attitude of acquiescence characterized the debate. "This is the President's special session of Congress," declared Representative Blanton. "He is the Moses who is leading us out of the wilderness." Representatives were aware of the questionable constitutionality of the act, and of the extraordinary grant of authority that they were giving the Chief Executive, but they did not hesitate. Some resentment was expressed that the President should leave to Congress the unpopular task of determining the tax provisions, but aside from these modifications the House undertook no critical revision. The bill passed by 325 to 76.

It was in the Senate that the critics were heard. Senator Reed sought to wipe out the grant of licensing power given the President, and when his proposal was voted down, 31 to 58, Senator Clark moved to strike out the entire industrial recovery section. "There is no logical or reasonable connection on the face of the earth," declared this senator, "between the meritorious and desirable provisions of Title II, for improving the unemployment situation by a public works program, and the provisions of Title I, for the emasculation of the anti-trust laws, the imposition of embargoes, the establishment of an industrial dictatorship, and the requirement that citizens of the United States may be required to obtain a license from some bureaucrat in order to conduct a legitimate business in a free country." His fellow-senators disagreed by a vote of 31 to 49. The Senate, however, limited the licensing provision to one year, authorized federal control over the oil industry, and granted the President power to prohibit imports in order to protect domestic producers bound by code agreements. Senator LaFollette successfully sponsored an amendment to the industrial recovery bill making all income tax returns public records, and Senator Clark got the Senate to approve the elimination of existing tax exemptions of federal, state, and local bonds. In conference, the Clark amendment was stricken out and the LaFollette proposal modified. These changes occasioned a sharp attack in the Senate on the conference report before the N.I.R.A. was finally passed on June 13.

When important amendments were made, it was the Senate that acted.

Party control of the lower house stultified critical deliberation in that body. The national securities act was jammed through the House under a rule limiting debate to five hours and banning amendments except from the Ways and Means Committee which reported the measure. In the Senate, after a free debate, an important amendment was added creating a corporation of foreign security holders. Senator Norris got his provisions written into the Muscle Shoals bill ruling out the commercial production of fertilizer and granting wider authority for building transmission lines.

The most serious opposition to the President's program arose over the curtailment of veteran's expenditures. Under the authority of the Economy Act (signed March 20), the President issued executive orders for reductions estimated to cut \$460,000,000 off the veterans' budget. Accounts of the hardships resulting from these cuts aroused intense dissatisfaction. What the senators objected to, in the words of Senator Long, was "authorizing some little 2-by-4, two-bit job-hunting politician" in the Veterans' Administration to decide the compensation due the ex-service men. "They [the executive orders] went beyond all reason in their reductions," said Senator Dill.

How much opposition to the President by Congress would the public tolerate? It became a matter of percentages in the fight over this measure. Senator Trammell proposed to limit cuts in the compensation for service-connected disabilities to 15 per cent. Senator Connally thought a 25 per cent limit on reductions might be "put over," while a 15 per cent restriction on cuts would prove too unpopular. "If we insist on cutting off only a small amount," the Senator stated, "and the President should veto the bill, the country will rally to the support of the President and will condemn Congress for undertaking to antagonize his policy." After several proposals had been voted upon, a compromise protecting by a 25 per cent reduction limit the compensation of World War veterans with service-connected disabilities and pensioners of other wars was passed. Vice-President Garner voted "yea" to break the tie vote of 42 to 42 and perhaps forestall more drastic amendments. The President objected to this compromise, but the veteran's *bloc* was ready to demand more. A consultation with House leaders was held, and the President made concessions, relinquishing \$100,000,000 from the reductions first contemplated. The House accepted this move by 243 to 154 on June 10, but the Senate sought more liberal provisions by supporting by 51 to 39 the Steiwer-Cutting amendment. Party leaders, fearful of favorable action by the House, immediately called a Democratic caucus and obtained a vote of 170 to 35 in support of the President's position. Conferees were informed that an unsatisfactory conference report would be met with a prompt veto, with all the President's constituents "listening in." The House rejected the Senate proposal by 177 to 208, and the Senate finally gave way. "I am

not willing to be responsible at this time for continuing a useless and futile contest," said Senator Black when he and eight other Democratic senators shifted their position to support the President's compromise. The deadlock was thus broken on June 15 by a vote of 45 to 36 in favor of the Administration. References were made to the "party lash" and to telephone calls from the White House urging senators to fall into line. The most persuasive factor, however, seemed to be the feeling that the public had full confidence in the President's sense of justice, and that championing the veterans' cause at the cost of defying the Administration would do the ex-service man more harm than good.

Our examination of the process of law-making during this session emphasizes the fact that despite the emergency conditions necessitating quick and decisive action, and despite the unified support given the President by the general public, factions remained in Congress. *Blocs*, such as the farmers', the veterans', and the inflationists', gained strength because of the critical economic situation and threatened at times to obstruct the President's recovery program. Party solidarity was uncertain and party control was limited in its powers. Public attention was unstable. By great good fortune, a skillful politician was in the White House who knew how to handle the public and how to negotiate with Congress. The President was able to out-manoeuvre his opponents and to compromise when a clear victory was impossible. His leadership supplied the unifying force.

It was at the level of the presidential office that the hierarchy of party, the confusion of legislative *blocs*, and the administrative authorities were given some measure of integration in meeting national problems. The developments in party organization in this session resulted in a further dispersion of responsibility. Party control in the House became a control of the formal procedure. For leadership in policy, Congress turned to the Chief Executive.

His influence perhaps in greatest measure rested upon public confidence, together with his personal as well as official prestige. But for weathering the many political vicissitudes of putting through a complicated legislative program he was not forced to rely entirely upon these intangible factors. A second line of defense of undoubted significance was his control of patronage. In the distribution of jobs, the test of pre-convention support of Roosevelt was applied, but to this was added the query: "How did you vote on the economy bill?" The President postponed all appointments except those that could not possibly be delayed, and owing to this (as one observer remarked) "his relations with Congress were to the very end of the session tinged with a shade of expectancy which is the best part of young love." His control of patronage was the only means that he had of touching individual members of Congress

directly. The President could defy pressure groups and appeal to the country over the radio. But when he wished to marshall Congress behind his program and to persuade congressmen to risk the displeasure of important interests in their districts, he needed some means of strengthening their position at home. The dangers, the faults, and the limitations of this method are obvious. Yet the session indicated that the consummation of a national program of legislation is greatly aided by transmuting through patronage the localism of our politics into support of the Chief Executive. The session demonstrated that despite federalism, bicameralism, factionalism, and the negative character of our political parties, the present governmental structure is capable of meeting a national crisis. Responsible executive leadership appeared. For its sanction, it relied in large measure upon the popular fear during an emergency and upon the political patronage flowing from an electoral victory. The session made clear the urgent necessity of responsible political leadership, but it afforded little light as to how this authority can be effectively retained under other conditions.

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## LEGISLATIVE NOTES AND REVIEWS.

**State Legislation on Public Utilities in 1933.** More significant legislation on public utilities was enacted by the American states in 1933 than in any other year since the beginning of the regulatory state commissions in 1911-14. Legislatures met in regular and/or special sessions in all of the states of the Union with the exception of Mississippi. The growing discontent with the failure of the existing regulatory system in many states to protect investors and consumers against what they considered to be high rates and unjust burdens inflicted by holding companies and inter-company agreements brought forth a vast number of bills. In several states, such bills became laws. The outstanding features of these laws include: (1) reorganization of utilities commissions to the end that all regulatory functions may be concentrated in one or a few agents; (2) increase in the regulatory authority vested in state commissions; (3) creation of a public counselor or attorney to protect the interest of the public in utilities cases before the commission and the courts; (4) regulation of holding companies and inter-company relations; (5) allocating to the utilities a portion of the cost of investigations and regulation; (6) increase in the taxes (corporation and/or excise taxes) imposed upon utilities; and (7) provisions for public ownership—state, district, or municipal. Moreover, in at least ten states, surveys or investigations into the utilities situation were instituted by the legislature, with the promise of more stringent legislation in the future.<sup>1</sup>

*Reorganization of Utilities Commissions.* A single utility commissioner was created in South Dakota, to whom was transferred all the powers of the railroad commission, which was abolished. The utility commissioner is appointed by the governor, with the consent of the senate, for a term of six years.<sup>2</sup> The legislature of Arkansas created the Arkansas corporation commission, consisting of three members appointed by the governor with the consent of the senate. The commissioners "hold office at the pleasure of the governor."<sup>3</sup> Under the new administrative code of Colorado, the public utilities commission constitutes a division in the department of law.<sup>4</sup> The power of the governor over the reorganized public service commission in Indiana was increased by the provision that "any member of the commission may be removed by the governor at his pleasure." The existing commission of five members was abolished and a

<sup>1</sup> States providing for surveys or investigations were Arizona, Connecticut, California, Illinois, Massachusetts, Nebraska, New Jersey, New York, North Dakota, and West Virginia.

<sup>2</sup> South Dakota, *Session Laws*, 1933, Chap. 166.

<sup>3</sup> Arkansas, *Acts of the General Assembly*, 1933, Act 12, Sec. 1.

<sup>4</sup> Colorado, *Laws*, 1933, Chap. 37, Art. 5.

new commission of three created, the members of which are appointed by the governor for four-year terms with maximum salaries of \$6,000 a year.<sup>5</sup> The Kansas legislature created a state corporation commission, composed of three members appointed by the governor and senate. The powers and duties of the abolished public service commission, and of the bank commissioner and charter board, relating to securities were transferred to the new corporation commission.<sup>6</sup>

*Increase in the Regulatory Authority Vested in State Commissions.* A drastic increase in the authority of the Illinois commerce commission is contained in the provision that the commission shall have power to order a public utility not to pay dividends on its common or preferred stock in cases where its capital has become impaired, where no provisions are made for reasonable and proper reserves and for a reasonable depreciation annuity, and where the payment of dividends on common stock would impair "the ability of the utility to render reasonable and adequate service at reasonable rates."<sup>7</sup> The commission is furthermore empowered to require the disclosure of the identity of every owner of one per cent or more of the voting capital stock, and to have access to all accounts and records of "affiliated interests having transactions . . . with public utilities under the jurisdiction of the commission."<sup>8</sup> The Pennsylvania legislature similarly gave authority to the public service commission of that state which enables it to ascertain "the identity and respective interests of every owner of a substantial interest (10 per cent or more) in the company's voting capital stock."<sup>9</sup>

The board of railway commissioners of North Dakota is granted a wide extension of powers, and also given protection against legal technicalities, by the provision that in "all hearings, investigations, proceedings, and valuations [all of which shall be public], the technical rules of evidence shall not be applied," and that no informality in procedure "shall invalidate any order, decision, rule, regulation, or rate made . . . by said board of railroad commissioners."<sup>10</sup>

The outstanding departure from the regulatory policy of American states is found in the law of Oregon which gives the public utilities commissioner "power of regulation, restriction, and control over the budgets of expenditures of public utilities as to all items covering proposed payment of salaries of executive officers, donations, political contributions and political advertising, and all other expenditures and major contracts

<sup>5</sup> Indiana, *Acts*, 1933, Chap. 93, Sec. 2.

<sup>6</sup> Kansas, *Session Laws*, 1933, Chap. 275.

<sup>7</sup> Illinois, *General Assembly*, 1933. House Bill 845, Art. III, Sec. 27a.

<sup>8</sup> *Ibid.*, Art. I, Sec. 8a.

<sup>9</sup> Pennsylvania, *Laws*, 1933, No. 333, Sec. 8b.

<sup>10</sup> North Dakota, *Session Laws*, 1933, Chap. 220.

for the sale or purchase of equipment, and as to all items covering or contemplating any payment . . . to any person or corporation having an affiliated interest. . . ." The commission must "determine whether each and all of the expenditures are fair and reasonable and not contrary to public interest," and approve or reject the budget in whole or in part. No unapproved expenditure may be "recognized as an operating or capital expenditure in any rate-valuation proceeding."<sup>11</sup> The "recapture" clause of the law is an even more noteworthy departure from past practices. Any net operating income "in excess of a reasonable rate of return upon the value of the utility property actually used and useful for the convenience of the public" shall be set up in a reserve fund "for the benefit of the consumers in reduction of net investment, in establishing and maintaining amortization or contingent funds or for any other beneficial purpose under the direct supervision and by order of the commissioner of public utilities."<sup>12</sup>

The authority of the public utilities commissions over the issuing of securities by public service companies was granted or strengthened in a number of states. This subject received special consideration in Pennsylvania,<sup>13</sup> Washington,<sup>14</sup> and Wisconsin.<sup>15</sup> Although the Pennsylvania law strengthened the authority of the public service commission over the issuing of securities, it fell far short of the recommendations of Governor Pinchot. The Washington law enumerates the purposes for which stocks and bonds or other evidence of interest or ownership or indebtedness by a public service company may be issued.<sup>16</sup> Any such security issued without the authorization of the public works department is declared void; likewise it is void if it does not conform in substance to the requirements specified in the authorization by the department.<sup>17</sup> The notable feature of the Wisconsin law is the entrusting of the administration of a thoroughly revised blue-sky law to the public service commission. One or more attorneys employed by the commission to aid in the administration of the act may, at the request of the commission, be added to the attorney-general's office.<sup>18</sup>

*Public Counselors.* Expert legal assistance in the interest of the public in the form of fact-finding tribunals, public attorneys, or public counselors is provided by the legislation of several states, notably Arkansas and Indiana. The fact-finding tribunal of Arkansas is a bureau of the

<sup>11</sup> Oregon, *Laws*, 1933, Chap. 441, Sec. 1.

<sup>12</sup> *Ibid.*, Sec. 30.

<sup>13</sup> Pennsylvania, *Laws*, 1933, No. 333.

<sup>14</sup> Washington, *Session Laws*, 1933, Chap. 151.

<sup>15</sup> Wisconsin, *Laws*, 1933, Chap. 158.

<sup>16</sup> Washington, *Session Laws*, 1933, Chap. 151, Sec. 3.

<sup>17</sup> *Ibid.*, Sec. 9.

<sup>18</sup> Wisconsin, *Laws*, 1933, Chap. 158, Sec. 189.17.

corporation commission entrusted with the power to investigate and make a finding of all facts entering into or forming the basis of rates to be charged for services supplied by any public utility.<sup>19</sup> It is further charged with the duty of furnishing legal assistance to any city or town or to the corporation commission in any litigation as to rates.<sup>20</sup> A public counselor was created by the legislature of Indiana, to be appointed by the governor and removed at the governor's pleasure. He is authorized "to appear on behalf of the rate-payers, patrons, and the public in all hearings before the commission, in appeals from the orders of said commission and in all suits and actions in any court in which the commission is a party" involving rates, services, valuations, securities, mergers, sales, and in all other proceedings affecting the patrons of a public utility or the public itself.<sup>21</sup>

*Regulation of Holding Companies and Inter-Company Relations.* Provisions intended to bring holding companies under control of state commissions and to regulate inter-company financing were considered in many states and were enacted into law in at least eight. "Upstream loans" (loans by an operating company to a holding company or affiliated company), without the consent of the public service commission, were prohibited by the legislatures of New York,<sup>22</sup> Oregon,<sup>23</sup> Wisconsin,<sup>24</sup> and Pennsylvania.<sup>25</sup>

Governor Lehman of New York, backed by the recommendation of the public service commission, presented a comprehensive program of reform in several messages to the legislature, only a minor portion of which was accepted by the general assembly. It is significant, however, that he did secure the enactment of a law providing that "except with the consent and approval of the public service commission first had and obtained, no public utility shall loan moneys, stocks, bonds, notes, or other evidences of indebtedness to any corporation, company, association, partnership, or individual owning directly or indirectly any stock of said public utility."<sup>26</sup>

The legislature of Oregon provided that "no public utility shall issue notes, or loan its funds, or give credit on its books or otherwise, to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission."<sup>27</sup> The Wisconsin law

<sup>19</sup> Arkansas, *Acts of the General Assembly*, 1933, Act 72, Sec. 2.

<sup>20</sup> *Ibid.*, Sec. 13.

<sup>21</sup> Indiana, *Acts*, 1933, Chap. 93, Sec. 4.

<sup>22</sup> N. Y., Cahill's *Consolidated Laws*, 1933, *Supplement*, Chap. 49.

<sup>23</sup> Oregon, *Laws*, 1933, Chap. 441, Sec. 2.

<sup>24</sup> Wisconsin, *Laws*, 1933, Chap. 440, Sec. 2.

<sup>25</sup> Pennsylvania, *Laws*, 1933, No. 333, Sec. 5.

<sup>26</sup> N. Y., Cahill's *Consolidated Laws*, 1933, *Supplement*, Chap. 49, Art. 6.

<sup>27</sup> Oregon, *Laws*, 1933, Chap. 441, Sec. 2.

provides not only that no money shall be loaned to a corporation, without approval of the commission, but also that no such loan shall be made to "any one or more of its officers or directors."<sup>28</sup> The same principle in general was enacted by the Maryland legislature. The law now provides that no Maryland corporation may assume any liability in respect to evidences of indebtedness until and unless the commission authorizes it as "lawful and proper and consistent with public interest."<sup>29</sup>

Laws providing in substance that no contract or agreement relating to management, advice, engineering, legal or other services, supplies, materials, etc., without the approval of the public utilities commission may be entered into or be legally enforceable between a public service company and any holding company or affiliated interest, were enacted by the legislatures of Washington,<sup>30</sup> Oregon,<sup>31</sup> Pennsylvania,<sup>32</sup> and Illinois.<sup>33</sup> The legislatures of New Hampshire,<sup>34</sup> Massachusetts,<sup>35</sup> and Vermont<sup>36</sup> oblige utilities companies to file with the public utilities commission complete information regarding contracts, agreements, purchases, sales, or other financial transactions between themselves and any holding company or affiliate. The New Hampshire law gives the commission the authority "to apply to the superior court for an order directing the public utility to cease making any such payment or doing such other thing, and thereupon the court shall make such order as the public good may require."<sup>37</sup>

*Shifting of the Cost of Hearings and Investigations.* The 1933 legislation marked a notable advance in the policy of shifting from the state or the public to the utilities involved the cost of rate and other hearings and of investigations into the conduct of utilities enterprises. Utilities in Arkansas are assessed each year at the rate of \$2.00 for each \$1,000 gross earnings from property within the state to bear the cost of the fact-finding tribunal created by Act 72 of the *Laws* of 1933.<sup>38</sup>

Legislation in Oregon places upon a public service corporation, applying for authority to issue securities, the expenses of the special investigation necessitated by the application.<sup>39</sup> Furthermore, the public utilities commissioner is authorized, with permission of the emergency board, to

<sup>28</sup> Wisconsin, *Laws*, 1933, Chap. 440, Sec. 2.

<sup>29</sup> Maryland, *Laws*, 1933, Chap. 381A.

<sup>30</sup> Washington, *Session Laws*, 1933, Chap. 152, Sec. 2.

<sup>31</sup> Oregon, *Laws*, 1933, Sec. 2.

<sup>32</sup> Pennsylvania, *Laws*, 1933, No. 333, Sec. 5.

<sup>33</sup> Illinois, *Laws*, 1933, *House Bill No. 1001*, Sec. 8A (3).

<sup>34</sup> New Hampshire, *Public Acts*, 1933, Chap. 182, Sec. 1. (258A, Secs. 2-5).

<sup>35</sup> Massachusetts, *Acts of the General Court*, 1933, Chap. 202.

<sup>36</sup> Vermont, *Public Acts*, 1933, No. 114.

<sup>37</sup> New Hampshire, *Public Acts*, 1933, Chap. 182, Sec. 1 (258A, Sec. 5).

<sup>38</sup> Arkansas, *General Assembly Acts*, 1933, Act 72, Sec. 8.

<sup>39</sup> Oregon, *Laws*, 1933, Chap. 441, Sec. 29.

collect from all public utilities a sum sufficient to conduct an emergency investigation or meet any other emergency expenditures in case the legislature is not in session and sufficient funds are not available in the regular appropriation. Or if an investigation reveals that some one utility company is guilty of unreasonable or improper practice, the cost of the investigation is to be assessed solely against the offending utility company.<sup>40</sup>

The commerce commission of Illinois is authorized to assess against the utility company involved the expense of investigating "the books, accounts, prices, and activities, or make inventories and appraisals of the property, of such public utility."<sup>41</sup> The expenses for experts (rate experts, engineers, accountants) employed by the North Dakota board of railroad commissioners in rate hearings or proceedings are to be paid by the utility being investigated or involved in such hearings or proceedings; and if the utility neglects such payment, the state board of equalization of taxation shall assess the amount against the property of the utility company, collection being made in the manner by which property taxes are collected.<sup>42</sup>

The expenditures of the public service commission of Wisconsin, incurred in carrying out its legal duty of investigating books, accounts, practices, etc., of public utilities or in making appraisals of the property of or in rendering any engineering or accounting service to any public utility, are assessed against the utility company or companies involved, provided that the assessment in any one year may not exceed one-half of one per cent of the gross intrastate operating revenue of the company in the past calendar year.<sup>43</sup> It is interesting to note that as late as August 3, 1933, Governor Lehman of New York, in a special message to the legislature, proposed a measure quite similar to the Wisconsin law, for the avowed purpose of transferring from the public treasury to the utilities a part of the cost of regulation. The proposal, along with the major provisions of his utility program, was rejected by the legislature.<sup>44</sup>

*Taxation.* Emergency tax measures in a number of states include public utilities in that class of property or occupations from which additional revenue is to be derived. Illinois imposed a two per cent occupational or sales tax on the gross revenues of utilities.<sup>45</sup> The Oklahoma sales tax includes receipts of public utilities.<sup>46</sup> The Virginia legislature, in special session, imposed on water, light, power, gas, telephone, telegraph, and elec-

<sup>40</sup> *Ibid.*, Sec. 27.

<sup>41</sup> Illinois, *Laws*, 1933, *House Bill* 1001, Sec. 41A.

<sup>42</sup> North Dakota, *Session Laws*, 1933, Chap. 220, Sec. 4.

<sup>43</sup> Wisconsin, *Laws*, 1933, Chap. 4, Sec. 2.

<sup>44</sup> *N. Y. Times*, Aug. 4, 1933.

<sup>45</sup> *Public Utilities Fortnightly*, Sept. 28, 1933, p. 424.

<sup>46</sup> *N. Y. Times*, April 24, 1933.

tric railway companies an additional tax of two-tenths of one per cent of the gross receipts from business done within the state.<sup>47</sup>

Bills providing for increased taxation of utilities were killed in the legislatures of several states. For example, the Idaho house of representatives rejected a bill for the doubling of the one-half mill tax per kilowatt hour on electricity;<sup>48</sup> a "direct initiative bill"<sup>49</sup> submitted to the voters of Maine at the September election, providing for the imposition of an excise tax of two per cent on the gross operating revenue of electric enterprises received from the sale of electric current, was defeated by a popular vote of 46,015 to 90,804.<sup>50</sup> A bill considered by the Kansas legislature proposing a tax of one-half of one per cent on the gross operating income of public utilities was rejected by the Kansas house by a vote of 56 to 55.<sup>51</sup>

*Public Ownership.* Interest in public ownership, especially of electric distributing enterprises, was greatly enhanced by government development of Muscle Shoals, the proposed St. Lawrence power development, and the offer of the federal government through the Public Works Administration of loans to municipalities for the erection or purchase of municipal utilities.

The Alabama legislature authorized cities and towns and other municipalities operating water or electric light and power plants "to contract with and sell water and power to other municipalities and to residents thereof."<sup>52</sup> Such municipalities were, furthermore, authorized to construct or acquire "power lines for the transmission of electricity from any point in this state or any other state to said . . . municipality for the purpose of serving the needs of its citizens."<sup>53</sup> For the purpose of acquiring lands and property necessary for such transmission, the municipalities were authorized to exercise the right of eminent domain.<sup>54</sup>

South Carolina has inaugurated a unique and ambitious experiment in the creation of public utility districts under the supervision of the highway department. The avowed purpose of the law is to provide an abundant and cheap supply of electric light and power for the use of the highway department "and to obtain as incidental thereto . . . service of light, heat, and power for the industries and homes of the farmers of the state."<sup>55</sup> Authority is granted to the department to construct, maintain, and con-

<sup>47</sup> Virginia, *Acts, Extra Session, 1933*, Chap. 14.

<sup>48</sup> *U. S. News*, Feb. 15, 1933.

<sup>49</sup> Maine Secretary of State, *Proposed Constitutional Amendments and Direct Initiative Questions to be Voted upon Sept. 11, 1933*, pp. 7-9.

<sup>50</sup> Maine Secretary of State's Office, *Official Records*.

<sup>51</sup> *U. S. News*, Nov. 27, 1933.

<sup>52</sup> Alabama, *General Laws, Extraordinary Session, 1933*, Act. No. 106.

<sup>53</sup> *Ibid.*, No. 105, Sec. 1. <sup>54</sup> *Ibid.*, Sec. 2.

<sup>55</sup> South Carolina, *Acts, 1933*, No. 275, Secs. 3-4.

trol the necessary lines and equipment, to sell to custom consumers at actual true cost plus an excess of not less than five per cent for amortization of original cost, to enter into contracts for current with the United States government or any state government, and to borrow from the Federal Reconstruction Finance Corporation. Loans are to be secured only by anticipated income, and the cost of maintenance and operation is to be allocated between the highway department and custom consumers on the basis of utility districts and further on the basis of units of power consumed.<sup>56</sup>

A broad grant of power to own and operate public utilities was extended to the municipalities of Arizona. In the grant were included water works, electric light and gas plants, electric transmission lines, pipe lines for oil and gas, garbage reduction plants, and manufacturing plants for the production of materials to be used "for public improvement purposes or public buildings."<sup>57</sup> A municipality is authorized to undertake a public ownership enterprise only upon the affirmative vote of a majority of the qualified taxpayers voting on the question.<sup>58</sup>

Indiana municipalities were given the right "to purchase, condemn and operate, or construct and operate, heat, light, power, and water utilities, not only for municipal purposes, but for sale to the public "in and within six miles of the limits of such municipality." No "certificate of public convenience and necessity" is required, and the municipality has full power to establish its own plants "although there is operating in said municipality a public utility engaged in a similar service under a license, franchise, or indeterminate permit."<sup>59</sup> Municipal ownership in Indiana in the future is encouraged by the provision that any public utility, by accepting an indeterminate license, permit, or franchise, shall "be deemed to have consented to a future purchase of its property, including property located in a contiguous territory . . . and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court."<sup>60</sup> Municipal ownership was further encouraged by the granting of authority to negotiate loans from the Federal Reconstruction Finance Corporation for the purpose of establishing, extending, or improving such utilities. Such loans shall be secured by a mortgage on the plant and its net earnings.<sup>61</sup> Such Indiana municipally-owned utilities are subject to taxation on their property except on that portion which may be "reasonably allocated by the public service commission to the furnishing of services to such municipality itself."<sup>62</sup>

<sup>56</sup> *Ibid.*, Secs. 7-13.

<sup>57</sup> *Ibid.*, Sec. 2.

<sup>58</sup> *Ibid.*, p. 946.

<sup>59</sup> *Ibid.*, p. 952.

<sup>60</sup> *Arizona, Laws*, 1933, Chap. 77, Sec. 1.

<sup>61</sup> *Indiana, Laws*, 1933, Chap. 190, p. 94.3

<sup>62</sup> *Ibid.*, p. 950.

In pursuance of a constitutional amendment<sup>63</sup> adopted at the general election in Wisconsin in November, 1932, allowing municipalities to finance public utilities outside of the 5 per cent debt limit by mortgaging the utility or its income instead of incurring a general indebtedness to be paid from taxes, the legislature in 1933 enacted a law setting up in detail the provision for issuing and paying such mortgages.<sup>64</sup> Municipalities were made to include power districts. All moneys received from such bonds must be applied solely for the purpose of the utility, an adequate depreciation fund and a redemption fund are provided for, and services rendered to the municipality by a municipally-owned utility must be paid for by the municipality. The law definitely provides that "the lien upon the property . . . and upon the income shall be the only security, and that no municipal liability is created."<sup>65</sup>

A Kansas statute provides that all public utilities moneys shall be kept by the municipal treasurer in a separate account and shall be used only for purposes of operating, revising, or extending the plant from which the fund is derived, or, in case of a surplus, shall be placed in a sinking fund for retirement of the bonds of the utility. Only when the surplus is not needed for the above purposes may it be transferred or merged into the general revenue fund of the city.<sup>66</sup>

Legislation in Nebraska legalizes the creation of a new "public corporation or political subdivision" of the state in the form of an electric power and irrigation district. Any one or more municipalities may organize and incorporate as such a district. The district is authorized to own and operate electric generating plants, transmission lines, and distribution systems, to sell energy for all purposes to private consumers, and to pledge its revenues for the payment of debts incurred in the purchase of plant and equipment.<sup>67</sup>

Minnesota municipalities may, by a three-fourths vote of the municipal government, or by majority vote at a referendum in home rule charter cities, sell electric energy to consumers outside the municipal boundaries not to exceed a distance of twenty-five miles. The extension of lines and the furnishing of service in other municipalities are contingent upon the consent of the interested municipalities. Indebtedness created for such extensions shall be a charge against the revenues of the utility only.<sup>68</sup>

Washington municipalities owning municipal electric plants are au-

<sup>63</sup> Wisconsin, *Constitution*, Art. XI, Sec. 3.

<sup>64</sup> Wisconsin, *Laws*, 1933, Chap. 162.

<sup>65</sup> *Ibid.*, Sec. 2 (c).

<sup>66</sup> Kansas, *Session Laws*, 1933, Chap. 141.

<sup>67</sup> Nebraska, *Laws*, 1933, Chap. 86.

<sup>68</sup> Minnesota, *Laws*, 1933, Chap. 141.

thorized to sell electric energy to, or buy such energy from, "any other city or town; public utility district, governmental agency or municipal corporation, mutual association, or to any person, firm, or corporation inside or outside its corporate limits."<sup>69</sup> Authority is granted to municipalities to acquire by purchase, or condemnation under the right of eminent domain, the necessary property for rights-of-way, power plants, and sub-stations.<sup>70</sup> No such property may be acquired by a municipality in any other city or town without the approval of a majority of the qualified electors thereof.<sup>71</sup>

It is significant to note, under this subject, that Governor Lehman's proposal to the New York legislature to permit municipalities to operate electric utility plants and to sell electricity to their residents was denied passage by the legislature. Such a permit, the governor argued, would provide an outlet for energy to be developed from the St. Lawrence power project in case the New York Power Authority proved unable to make satisfactory contracts with private utilities companies. It would also provide powerful potential competition in case private utilities charged exorbitant rates.<sup>72</sup>

Significant trends in 1933 state public utilities legislation appear to be along the lines of stricter control of holding companies and inter-company relations, greater protection of investments in utilities securities, wider recognition that state regulation must provide more effective protection of the public interests, and the legalizing of publicly owned utilities as a powerful potential competitor with privately owned enterprises.

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The Vote-and-a-Half System of Majority Choice by Plurality Vote, and of P.R. One of the most serious problems involved in the democratic choice of officers has always been that of securing the election of the candidate who is most favored by the electorate when more than two candidates are contending for a position and no candidate can get a clear majority. A similar problem exists when two or more positions are grouped, and there are more candidates than positions.

A divided vote in the situations mentioned naturally suggests that the elimination of the least popular candidates will on a revote determine the real preference of the voters. However, as is well understood, this is not an accurate test, because the next to the last candidate, for example, might quite possibly have run well up in the lead but for the decrease in

<sup>69</sup> Washington, *Laws*, 1933 (Regular Session), Chap. 51, Sec. 1.

<sup>70</sup> Washington, *Laws*, 1933 (Regular Session), Chap. 51, Sec. 2.

<sup>71</sup> *Ibid.*, Sec. 3.

<sup>72</sup> *N. Y. Times*, March 29. (Governor Lehman's special message of March 28.)

his vote caused by the weakest candidate; or to use a clearer example, if only the two highest are allowed to compete in a revote or run-off election, the candidate who was third highest is excluded, although he might have won the revote by the votes of those who voted for the fourth and lower candidates. On the other hand, unless the revote is limited to two candidates, it may result in another failure to give a majority to any candidate, which would suggest yet another revote. The expense to the government of such revotes for public officers, and the additional campaign costs involved, as well as the time element, make more than one revote a practical impossibility as a rule, and make even a single run-off vote undesirable, entirely apart from its major defect from the point of view of securing the election of the choice of the majority of the electorate.

The compromise device of election by simple plurality vote has usually been adopted as the most practical solution of the problem, as it avoids revotes and gives at least the appearance of democratic control. Its great defect is, of course, that it makes possible the election, by accident or by design, of a minority candidate by a split in the ranks of the real majority. This defect is so serious in practice that it may now be said that the device has definitely proved itself to be undemocratic.

Another solution of this problem is the device known as preferential voting, in one form or another. The most effective of the simpler preferential voting plans seems to be that known as the Bucklin plan, in which the voter has a first and second choice, and on the third column of his ballot, as many other choices as he cares to indicate. If no candidate secures a majority of first choices, the second choices are counted, and if still no candidate has a majority, the third column votes are counted for all candidates and the one receiving the highest total wins. This makes it possible for the majority faction of the voters to get together eventually for the selection of a candidate, but it shares the defect of all non-transferable-vote preferential systems of permitting a second choice vote in certain situations to work too effectively against a voter's first choice vote.<sup>1</sup>

The simplest of the preferential systems is, of course, that in which the elector is permitted to make a first and a second choice only, and if no candidate gets a majority, the second choices are counted, and the candidate receiving the highest vote wins. However, this system is not so thorough as the Bucklin plan, and it magnifies the defect of the non-transferable vote preferential systems which gives such undue weight to second choice votes that in certain cases a voter practically pairs with himself and nullifies his first choice vote. Moreover, any system of preferential voting which provides for the elimination of all but the two highest

<sup>1</sup> See C. G. Hoag and G. H. Hallett, *Proportional Representation*, Appendix x.

candidates for counting of the second choice votes is essentially defective for the same reason as is a run-off vote between the two highest candidates, as explained above.

The transferable vote preferential system avoids the defect of alternative choices defeating preferences, but it does not completely avoid the defect of the run-off system, as it eliminates the weakest candidates successively. This and the Nanson and Hallett systems (described in the Hoag citation) are even more complicated and difficult to apply than the systems already described. Also, the transferable vote systems have the serious disadvantage of requiring all ballots to be gathered in a single place for counting, because transfers of votes are made progressively from ballots cast for candidates who are eliminated from the contest.

Although the preferential system does solve the problem of majority choice by a single election, the indifference of voters to their preferential voting privileges, the confusion experienced in balloting, and the difficulties encountered in computing results under some of the systems have together prevented the general adoption of the preferential vote, and have led to its abandonment in many places where it has been tried.<sup>2</sup>

This paper recommends another device for the solution of the problem of majority control in elections where more than two candidates are contending. It is admittedly a compromise device, but it deserves adoption, it is submitted, because it is reasonably effective, and is a much simpler system to understand and to use, and its effect is far more easily visualized, than any other system. Moreover, it is simple enough to be used with voting machines.

Although not quite so thorough as the Bucklin or the transferable vote system, as for example where the majority faction is split by candidates of approximately equal strength and the leading minority candidate has half again greater strength than any one of the majority candidates, the system here proposed will nevertheless prove completely effective in all but a very small percentage of situations, and it is much less radical in changing voting habits. Also much less ballot space is required, and the vote can be computed more readily, making it considerably more available for large political units. As compared with other preferential systems, it avoids the over-valuation of the second choice vote, and also avoids the defect of selecting the highest candidates for the final count, besides simplifying the balloting and counting. As compared with the run-off method, this franchise device has the great advantage of being inexpensive, since all it requires is a little more space on the ballot, and a fraction more time to count the ballots, and of course it has the advantage of avoiding the defect of selecting the two highest candidates for the run-off.

<sup>2</sup> See Benjamin H. Williams, "Prevention of Minority Nominations," *Annals of American Academy of Political and Social Science*, Vol. 106, p. 111.

The device may be called the vote-and-a-half system, and consists simply in permitting each voter to cast as many half-votes as he may cast whole votes (i.e., one whole vote plus one half-vote for each office), but only for different candidates. Although pyramiding or cumulating of votes is not permitted, no cumulating half-vote would invalidate a whole vote, and the voting of too many half-votes would merely spoil the half-votes for that office or group; so half-votes could never spoil whole votes, nor would spoiled whole votes prevent the counting of half-votes. Half-votes, if not spoiled, would always count, and so would always be tabulated along with, but as a separate group from, the whole votes; but a candidate receiving a majority of all whole votes cast for the office or group would not have half-votes counted against him to disturb his position. Tie votes resulting from whole and half-vote totals would give the choice to the candidate receiving the highest number of whole votes; and double ties would leave the choice as at present provided by law. In short, the system permits a whole vote for one candidate and a half-vote for another candidate for each office to be filled, but does not disturb candidates who win a majority of all whole votes cast.

The effect of this vote-and-a-half system would be similar to that of the preferential systems, and would assure the choice, in a single election, of candidates favored by the majority, in all but a few extreme situations. All the arguments in favor of preferential systems would apply to this system, particularly that it would secure majority choice by plurality vote, largely doing away with the typical situation of a split vote of the majority group giving the choice to a minority candidate; also that it would tend to block manipulation by a minority faction or usurpation by the opposition.

The following examples show the operation of the vote-and-a-half system in typical situations:

<i>Candidates</i>	<i>Whole Votes</i>	<i>Half-Votes</i>	<i>Effective Vote</i>
A (minority)	3,150	400 ( 200)	3,350
B } (majority)	2,980	2,600 (1,300)	4,280
C }	2,600	2,580 (1,290)	3,890
A (minority)	2,200	600 ( 300)	2,500
B } (majority)	2,150	2,600 (1,300)	3,450
C }	1,800	1,300 ( 650)	2,450
D }	1,500	800 ( 400)	1,900

In both examples, the minority candidate A would have won under the "single-shot" vote, but under the vote-and-a-half system the majority candidate B would be successful. The examples assume, of course, that most of the voters of the majority group used their half-votes, which may or may not prove true in practice. In the writer's opinion, the half-vote

idea will appeal to the voters as an understandable and tangible privilege, and there will always be an inclination to use it whenever there is an acceptable second candidate. Also it will be used deliberately whenever it is desired to block the choice of a candidate. Individual candidates will, of course, want their friends to vote solely for themselves, as half-votes for others may affect their own position if they fail to secure a clear majority, but they will urgently want the half-votes of the friends of other candidates, which will tend to break down any boycott of half-votes. Most important, if there is a majority group, organized or not, its members will be anxious to use their half-votes for candidates friendly to the group, lest the group lose to the minority or opposition. Independent voters will also be glad of the opportunity to use their half-votes, so as to throw their weight against objectionable candidates.

It should be especially noted that the influence of the half-votes is rather moderate, since it requires two half-votes to balance a whole vote, which means that a definite convergence of half-votes would be necessary to overcome whole vote leads, showing a preponderant willingness on the part of the voters to have that candidate succeed.

The following example illustrates the possibility of a minority with a strong leader controlling the choice because of a split in the majority vote between several candidates of considerable strength:

<i>Candidates</i>	<i>Whole Votes</i>	<i>Half-Votes</i>	<i>Effective Vote</i>
A (minority)	603	92 (46)	649
B	465	144 (72)	537
C (majority)	229	356 (178)	407
D	362	294 (147)	509

Under the more thorough Bucklin preferential vote system, candidate D, a majority candidate, won the election in the situation presented.<sup>3</sup> But, as already suggested, the vote-and-a-half system is to be preferred because of its advantages of simplicity, attractiveness to the voters, applicability to all sizes of electorates, and ease of computation, besides its adequacy for all but a very few situations.

The vote-and-a-half system can be applied to any election of candidates, partisan or non-partisan, and whether in district, city, county, state, or national elections, and whether special, primary, or general. Although the examples given in this paper have been selected to illustrate only contests for a single position, the same examples show that the system works equally well in contests for multiple positions, as on a board or commission. It can therefore be adopted as a standard system, without exception, for all nominations and elections of candidates, which in itself would avoid much possible confusion and aid its success. Attention

<sup>3</sup> See Senate Document 985, 63rd Congress, 3rd Session.

should be called, however, to the fact that voting machines which could not be adjusted to register a whole vote and a half-vote (i.e., a double vote) could not be used under the vote-and-a-half system, and either new machines would have to be secured or regular ballots used.

After a thorough trial, if the system finds favor with the electorate, it may be found possible to abolish in some states, particularly in those which have for all practical purposes but one party, the direct primary election, as the vote-and-a-half arrangement automatically performs, within limits, the function of the primary, as does the preferential system. And if experience indicates that the elimination of the primary will seldom change final results, it may appear safe to take the step, unless other considerations are felt to be controlling. Certainly it will be possible to abolish at least the run-off primaries now used in many of our states.

The courts of several states have declared the proportional representation system unconstitutional under the state constitution, because the voters are not given the right to vote for a candidate for every office to be filled on a board, but the opinion in most states where the matter has come before the courts seems to be that there would be no objection to any system permitting the elector to vote a first choice for as many candidates as there are offices to be filled. There could hardly be any objection in such states, therefore, to the vote-and-a-half system, which simply adds a half-vote to the whole votes now allowed, and in no way deprives the elector of his right to vote for a candidate for every office to be filled. If necessary, of course, the state constitution could be amended to permit the use of the system.

Where proportional representation is constitutional, the vote-and-a-half system as described can easily be converted into a very practical and easily operated proportional representation device for the election of groups of officers or legislators. As compared with the Hare system (the single transferable vote, which must be counted at a central office), or the list system (which is based on party tickets), the vote-and-a-half proportional representation system is not quite so thoroughgoing, but it will normally prove effective, and it is incomparably simpler to vote and to count, and can be applied to the election of any board on a partisan or non-partisan basis, requires much less ballot space, and votes can be counted at the precincts or at a central office or offices as desired. As compared with the cumulative vote system of securing minority representation, the vote-and-a-half proportional representation system is more accurate, may be applied to the election of any group without adjustment, is simpler to vote and requires less ballot space, and is less likely to penalize the majority because of concentration of voting strength. All that is required to make the vote-and-a-half system function as a proportional representation system is simply to apply the limited vote de-

vice, namely, permit the elector to vote only one whole vote and one half-vote for the candidates for positions on a board or commission or group of several members. In this way minorities will be enabled, by concentrating their vote, to elect their share of members on the board or commission, since majorities, to elect their share, will have to spread their vote, and so will reduce the plurality required to elect. The operation of the system is similar to that of the Hare system, but without the quota feature and other complications.

The following draft shows how the vote-and-a-half system could be set up. The provisions of the draft would, of course, need to be properly amended into the law of each state to fit its present election arrangements.

*Section 1.* In all elections in which candidates are voted upon for nomination or for election to office, each elector qualified to vote may cast for each office or group a half-vote in addition to each whole vote he is entitled to cast. This shall not apply to voting on questions or propositions.

*Section 2.* Half votes may be cast for any candidate or candidates except those for whom a whole or a half-vote has been cast.

*Section 3.* Improperly cast half-votes shall not be counted, and they shall not affect properly cast whole votes.

*Section 4.* When more than the proper number of whole votes or of half-votes have been cast for candidates for any office or group, none of the said whole votes or of said half-votes, as the case may be, shall be counted, but the other votes, whether half-votes or whole votes, which are correctly voted in every respect shall be counted.

*Section 5.* Half-votes shall be cast in a special column which shall be provided to the right of and of the same size as the column provided for whole votes for candidates. The columns shall be headed by the words 'Whole Vote' and 'Half Vote' respectively. This shall also apply to columns for voting for a group by a single mark or vote.

*Section 6.* The instructions to voters on ballots and instruction cards shall include the following statement: 'You may cast a half-vote in addition to each whole vote which you are entitled to cast for any office or group, but not for the same candidate or candidates. Make sure to use the proper column. Half-votes cannot spoil whole votes, and a majority of whole votes nominates or elects a candidate regardless of the half-votes cast. Mark half-votes the same way as whole votes.'

*Section 7.* Half-votes shall not affect the nomination or election to office of a candidate who receives whole votes on a majority of all the ballots cast for candidates for that office or group.

*Section 8.* If two or more persons receive an equal and the highest number of whole plus half-votes cast, the one who received the highest

number of whole votes shall prevail, failing which the tie shall be determined as otherwise provided by law.

*Section 9.* Half-votes shall be tallied in the same manner and at the same time as whole votes, but separately, and shall be properly identified. When the tally is completed, the half-votes shall be counted and the totals properly indicated as in the case of whole votes. Immediately following or under all statements of totals of half-votes, and enclosed in parentheses, shall be indicated the effective value of such totals.

*Section 10.* In determining results, if no candidate, or an insufficient number of candidates, is nominated or elected for an office or group by a majority of whole votes cast for that office or group, the effective value of the half-votes cast for each candidate for that office or group shall be added to the whole votes received by each such candidate, and a plurality or the highest numbers of the resulting totals shall nominate or elect the candidate or candidates to the number required in addition to those nominated or elected by a majority of the whole votes cast.

*Section 11.* Unless a different intention is apparent from the context, the following terms shall have the following meanings whenever used in this or any other law of this state:

- (a) Whole votes are votes cast in the ballot column devoted to whole votes, and have a full unit value if properly cast. Votes cast or provided for before the adoption of this system of voting were whole votes, and are called whole votes under this system.
- (b) Half-votes are votes cast in the ballot column devoted to half-votes and have a half-unit value if properly cast.
- (c) Votes and vote mean whole votes and half-votes indiscriminately.
- (d) Effective value of half-votes is the full unit value of a total of such votes properly cast for a candidate, and is determined by dividing by two the total number of half-votes properly cast for such candidate.
- (e) Effective vote is the total of whole votes properly cast plus the effective value of half-votes properly cast.
- (f) Number of votes, total vote, and entire vote, mean the total number of whole votes properly cast, except for the determination of results of elections, when they mean the effective vote.
- (g) Highest or lowest number of votes is of the effective vote.
- (h) Equal number of votes is of the effective vote, and shall be resolved as provided in section 8 hereof.
- (i) Majority of ballots is of the whole votes properly cast, or failing that, of the effective vote. When more candidates receive a majority vote than there are positions to be filled, those with the highest vote shall prevail.

- (j) Other terms requiring interpretation in connection with this system shall be so construed as to further this plan of voting, and in no way to reduce the rights and privileges of electors.

*Section 12.* If for any reason this system of nominating and electing by whole votes and half-votes is declared by a court having final jurisdiction of the matter to be invalid as applied to any office or offices, it shall cease to apply to such office or offices, but the applicability of the system to other offices shall not be affected. If any detail or feature of this system of nominating and electing which is not of such a nature as to be indispensable to the proper operation of the system is declared invalid by such a court, such detail or feature shall accordingly be omitted or modified, but other details or features shall continue to be used and observed."

The adoption of the vote-and-a-half system and its acceptance by the electorate will, it is believed, bring about majority choice by plurality vote in single elections, and effectively solve the problem of democratic control when there are more than two candidates for a position, or when two or more positions are grouped and there are more candidates than positions.

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## FOREIGN GOVERNMENTS AND POLITICS

**British Political Parties in 1933.**<sup>1</sup> The present confusion in British parliamentary life results from three irreconcilable elements. In the first place, the House of Commons resembles the typical Continental legislative chamber in its division into groups, with an only provisional coalition of some of them into what might be called indifferently a *union sacrée*, or a "government of concentration." In the second place, the active political life of the electorate, being based on the traditional political parties, seems to have very little relation to parliamentary groupings. In the third place, the government shows a tendency to borrow its policies from the program of the opposition. Examination in turn of each of the three elements may reveal whatever coherence exists.

If one starts to enumerate groups in the House of Commons from "right" to "left," one finds on the extreme right the "die-hards," next to them the middle-of-the-road or Baldwin conservatives, and next to them the "young" conservatives. These three groups all receive the Conservative whip, support the National Government, and (sometimes grudgingly) follow Baldwin. A trifle farther to the left are the Liberal Nationals, or "Simonites," the Liberals who allied themselves with the Conservatives in the election of 1931. They receive the government whip, and their own whip also. To their left, and the last group supporting the government, is the National Labor party, i.e., Mr. MacDonald and his former Labor followers, now separately organized.

Since the new session of Parliament was opened in November, 1933, the opposition has consisted of three groups. First are the Liberals. From the meeting of the new parliament in 1931 until September 28, 1932, they supported the government, and their leaders were members of it. From September, 1932, until November 21, 1933, they sat below the gangway on the government side. In November, 1933, they crossed the house and joined the opposition. To the left of the Liberals are the four members of Mr. Lloyd George's "family party" who were elected in 1931 as Independent Liberals opposing the government. The Labor party is at the extreme left of the present House.<sup>2</sup> There are no Communists, nor any representatives of an organized Fascist group.

As so far analyzed, the House of Commons clearly resembles a Continental legislative chamber. But if the groups are the effective element, in politics at the moment, the three great organized parties will reassume

<sup>1</sup> This article is based largely on information obtained privately in London. For events in the autumn of 1933, I have relied particularly on the *Manchester Guardian* (daily edition) and *The Week* (London).

<sup>2</sup> The three I.L.P. members are perhaps technically a separate group.

their position as soon as the *union sacrée* is dissolved. It is of parties, therefore, that any detailed analysis is properly made.

The Conservative party is at present the largest in the country.<sup>3</sup> To its traditionally Tory and conservative membership it has recently added many who twenty years ago either were or would have been Liberals, and has had a corresponding influx of Liberal ideas. Its post-war success has made it the party of almost every young man of moderate views with a career in politics to make. A party thus overgrown and heterogeneous is bound to have difficulties of leadership and to show a tendency to faction. Its titular leader, Mr. Baldwin, seems impregnable in spite of incessant attack. His leadership, however, is based on necessity rather than on his policies or personal qualities. He is invaluable because he alone can command the allegiance of the parliamentary party as a whole. But he has seldom sponsored a policy; perhaps he has never converted anyone to a policy. Greatly liked and admired in parliamentary circles because he "plays the game" in traditionally decent fashion, he is the object of unbelievable detestation on the part of many young men interested in politics because he lacks definiteness in policy and ability to command.

For some years there have been two ultra-conservative groups in the Conservative party. One is the "die-hards" who have retained a pre-1911 view of the proper balance of the constitution, and who began again in November, 1933, to push for House of Lords reform. The other is the tariff reformers. To some extent, they are identical; and they have been joined by those Conservatives who oppose the National Government's Indian policy. Led by Winston Churchill (who sits below the gangway on the government side of the House) and Lord Lloyd, and with the complete approval of Brigadier-General Page Croft and his tariff reformers, the reactionaries of the Conservative party are fighting the government policy in India—a policy which, it appears, is already more to the right than the country as a whole approves. In foreign affairs, this group has a policy which is distinctive though superficially self-contradictory. They are strongly pro-French and anti-German, with, however, a tendency to approve Hitlerism. The "die-hards," as the whole group are usually called, have strong support in the cabinet. The not infrequent predictions of a split in the Conservative party are based on the assumption that they will either leave Mr. Baldwin or get rid of him.

The center of the Conservative party is loyal to Mr. Baldwin and to

Percentage of popular vote (excluding uncontested constituencies)

<i>Election</i>	<i>Conservative</i>	<i>Liberal</i>	<i>Labor</i>
1924	48.3	17.6	33.0
1929	38.2	23.4	37.1
1931	54.9	10.2	30.7

See *Constitutional Year-Book, 1933*, p. 266.

any policies which he may adopt. On the left are the "young" conservatives, who demand a policy both more liberal and more socialistic than the mass of members of the parliamentary party approve.

The Liberal party, already split by Mr. Lloyd George in 1916 and never reunited in sentiment, was split again in 1931. One group is led by Sir John Simon, who just before the financial crisis of 1931 definitely separated himself from the Liberal party but (when the crisis arrived) had not yet found a political home elsewhere. They owe their seats largely, if not entirely, to the complaisance of the Conservative machine, and if rather more liberal in their ideas than the Conservatives, are not distinguishable in conduct from those with whom their political fortunes are bound up. These Liberal Nationals, as they are called, are (by implication) exiles from the Liberal party. That is to say, their leaders do not speak in national gatherings of the party, nor hold party office, and except in constituencies which they represent, they have no local organizations. Mr. Lloyd George also separated himself from the Liberal party in 1931. He and his "fund" are now outside the only party in which he has ever been entitled to claim a home; he has not yet perfected other arrangements.

Sir Herbert Samuel, then, was left the leader of a party strangely small in the House of Commons, but much more powerful and more united in the country than the divisions of the parliamentary party would suggest. His followers control the central party organization and the National Liberal Federation, and the party organizations in the constituencies are faithful to them.

Though the Liberals are still believers in a modified individualism, their chief distinctive tenet is a continued faith in free trade. In the election of 1931 it was understood—in fact it was agreed—that the tariff should not enter into the contest, that a National victory was not to be considered a victory for tariff reform. But not only did the election return a majority of Conservatives; a clear majority of the House of Commons were Conservatives who wanted tariffs, and who maintained that their success had given them the right to insist on them. The fiscal program of the reconstituted National Government was found to center around protective tariffs. The Liberals, both in the cabinet and outside, were bitterly displeased; but because they believed in the existence of a national emergency, and were honest in their support of a national government, they did not oppose the emergency tariffs. When, however, it was proposed to make tariffs permanent, they objected and received the curious privilege, spoken of by Mr. MacDonald as an emendation of the constitution, of opposing the government's policy in House and country while remaining in the cabinet. The Imperial Conference at Ottawa was the breaking point. After it, the Liberal ministers resigned from the

government, but continued to give it support in other matters, and took their seats below the gangway on the government side. Here they gave dissatisfaction to everyone, including themselves. The Scarborough conference of the National Liberal Federation in the spring of 1933 spent most of its time attacking the government and pointing out the unreality of the position of the Liberals in Parliament, but agreed in saying that it was entirely a matter for the judgment of the parliamentary party as to when they should cross the floor of the House and go into opposition. With an ineptitude which has characterized their strategy for several years, and which may be ascribed to ineffective leadership, they waited to do so until their action had almost ceased to count. They crossed in November, 1933.

The Labor party, like the Liberal party, was split in 1931 more in appearance than in actuality, and the parliamentary situation does not represent the feeling of the country. The parliamentary Labor party witnessed the loss of Mr. MacDonald, Mr. Snowden, Mr. Thomas, and a dozen of their followers without regret. In the country, it is true, the prestige of the party was for the moment much hurt by the loss of MacDonald, for although his influence with his colleagues was already gone, his persuasiveness with the masses had survived. But his loss was a good deal counterbalanced by Mr. Henderson's loyalty to the party; for Mr. Henderson was as popular with the masses as was Mr. MacDonald. Unfortunately, Mr. Henderson failed of reëlection to the House of 1931, along with most of the former Labor ministers.<sup>4</sup> His place as leader of the opposition was taken by Mr. George Lansbury, former First Commissioner of Works, whose chief coadjutors on the front opposition bench have been Major Attlee, former postmaster-general, Sir Stafford Cripps, former solicitor-general, and Colonel Josiah Wedgwood, a member of the Labor cabinet of 1924. Though these men have led a surprisingly effective opposition, it cannot be denied that Labor in the House of Commons suffers from a lack of capable speakers. Some of the most useful routine work of the opposition has been done by Labor members previously unacquainted with the subject under debate, but ably briefed over a period of time by the Labor Research Bureau in Transport House, of which Mr. Arthur Greenwood, former minister of health, is director.

Up to the split in 1931, the Labor party had wavered between a desire for "socialism in our time" and a belief in the "inevitability of gradualness." On the whole, the strong trades-union elements in the party were at most mildly reformist socialists, while the bourgeois and intellectual elements, which have been stronger in the House of Commons than in the

<sup>4</sup> Thirteen members of the cabinet of 1929-31 and 21 other ministers were defeated. Mr. Henderson was reëlected in August, 1933, at a by-election in Clay Cross.

country, wanted to carry out a definitely socialist policy. Though Mr. MacDonald was a bourgeois intellectual, he led a government whose policy was only slightly tinged with socialism, and when he left it, he left a party quite unsure of what it actually stood for. The subsequent two years have been a period in which the national executive of the Labor party has been making serious and largely successful efforts to formulate a policy to which the party can be pledged both in opposition and in power.<sup>5</sup> This policy has inevitably been more of the left than earlier Labor policies have been, and the temper of the annual Labor party conferences in Scarborough, Leicester, and Brighton has been firmly socialistic. But a certain difference in point of view remains, and resulted in the famous controversy over dictatorship in the summer of 1933.

The Independent Labor party, so long the chief socialist society affiliated with the Labor party, had put itself into an uncertain position in relation to the larger organization by its policy of working with Communists.<sup>6</sup> As a result, it split, and those of its members who continued in the Labor party formed the Socialist League, which has published recently a series of brilliantly written pamphlets dealing with various items of policy of a Socialist government.<sup>7</sup> The keynote of the League's policy on the political side is an assumption that private capital would resist a majority Socialist government by economic means and by using the House of Lords.<sup>8</sup> The League therefore believes that a Labor majority would have to start by causing Parliament to pass an emergency powers act giving them temporary control of the whole government.

Perhaps most persons (Socialists and anti-Socialists alike) who are in close touch with politics believe that a majority Labor government with a socialist policy would find itself faced with precisely the sort of opposition which the Socialist League premises. For a variety of reasons, however, Mr. Walter Citrine, secretary of the Trades Union Congress, openly opposed the intention of the Socialist League to create a "dictatorship," and what appeared to begin as a debate between Sir Stafford Cripps and Mr. Citrine was made a party issue in the Labor party conference

<sup>5</sup> Four official "policy reports" were issued in November, 1932: *The Land and National Planning of Agriculture; The Reorganization of the Electricity Supply Industry; The National Planning of Transport; and Currency, Banking, and Finance*. In August, 1933, Transport House issued three more: *Socialism and the Condition of the People; The Colonies; and Housing and Slums*.

<sup>6</sup> The Labor party has definitely taken the position that no Communist or Communist organization may be affiliated with it.

<sup>7</sup> Most of the important ones were republished in the summer of 1933 as *Problems of a Socialist Government*, with an introduction by Sir Stafford Cripps. This volume is invaluable as a presentation of what will probably be the maximum plans of a Labor government if such a government soon comes into being.

<sup>8</sup> In England, one does not mention the monarchy in this connection.

at Brighton in September, 1933. The conference voted its disapproval of dictatorship, whether of the right or of the left. This controversy encouraged the leaders of the Conservative party (*pace* their own emergency legislation of 1931) to come forward as defenders of democracy and parliamentarianism.<sup>9</sup>

The results of certain by-elections in the fall of 1933 have greatly encouraged the Labor party, and have raised the question again as what will be the future of the present coalition. In a straight fight in East Fulham, ordinarily safely Conservative, between a Conservative and a Socialist, the Socialist won, largely by campaigning as an extreme pacifist, and as an opponent of the rearmament which the government was quietly conducting and which the Conservative candidate approved. Even more significant was considered the result in the Stamford and Rutland division on November 21. In this aristocratic and purely agricultural constituency, the Conservative candidate won, but his majority was only 1,787—smaller by 11,640 votes than the Conservative majority two years ago. And Labor's vote was up by 5,372.

The increasing unpopularity of the National Government raises the question of the future. Certain indications of possible policy seem safe to record. If the die-hards should leave the National Government over India, when the report of the committee on White Paper is finally made early in 1934, there might be a middle coalition on a new basis, liberal in all but name, and composed of the bulk of the Conservatives and of most of the Liberals. The leader would be Mr. Baldwin. Mr. MacDonald's fears of some such development were revealed by his carefully concealed negotiations last summer with Mr. Winston Churchill and Lord Lloyd with a view to continuing the MacDonald National Government on a die-hard basis if necessary. But since the Liberals went into opposition, the National Government tends more toward the right, and the Conservative party is less likely to break up because the government's policy is more conservative. Can, then, the Liberals find a working basis for an agreement with Labor either in Parliament or in the country? It seems clear that Labor will not consent, and that except sporadically in individual constituencies the Liberal party will continue to be ground smaller and smaller between the upper and nether millstones.

The long-continued coalition of 1918–22 based on a Conservative majority ended in a strictly Conservative government. Should not similar conditions have a similar outcome now, since the National coalition is

<sup>9</sup> The debate between Cripps and Citrine was in the *New Clarion*, a weekly paper representing the Labor left. An article in the June 17 number, by Professor Harold J. Laski, analyzes the controversy. Mr. Baldwin stated his views in an article entitled "The New Tyranny" in *The News-Letter: The National Labor Fortnightly* for July 22, 1933.

unpopular and the crisis past? Probably most Conservatives would prefer this solution, for they feel that so large a Conservative majority should no longer be prevented from seeking purely Conservative aims. The first obstacle is Mr. Baldwin's loyalty to Mr. MacDonald. The second is the fact that power is still in the hands of Mr. MacDonald, who—even his strongest opponents admit—has lost none of his deftness in political manipulation.

Many politicians have suggested a new election fought on a "national" basis. Such an election might be a success, since the government still has a certain reserve control over the press and the radio. A new "national" election is the avowed desire of National Labor members and "Simonites," who see their seats unsafe without Conservative support. The great obstacle in its way is the unwillingness of the Conservatives to carry National Labor and Liberal Nationals any longer than they must.

It seems probable, therefore, that things will remain as they are until accident rearranges them. Toward the end of the life of Parliament, probably in the autumn of 1935 or the spring of 1936, a general election will be necessary. It is likely to result in a situation like that of 1929 when Labor was the largest party but had no majority. It might possibly result in a Labor majority.

Opposition to parliamentary government, under any arrangement of parties, is probably weaker in England today than in any other large country in the world. The Communists—who are orthodox Communists—appear not to have increased in numbers during the recent stages of the depression, and are perhaps less militant than a few years ago. Any danger of an anti-parliamentary movement which exists is Fascist. The avowed Fascists, who are professedly anti-parliamentary, claim to be growing rapidly in numbers and to be keeping their membership secret until the moment when they can rise and take control.<sup>10</sup> They do not, however, present the real Fascist threat to the community. That threat is provided by three elements: (1) the feeling of sympathy for Hitlerism on the part of important persons and interests in the City, (2) the Fascist desires, almost avowed, of the Beaverbrook press, and (3) the presumed aims, thought to be incompatible with any possible parliamentary majority, of such men as Lord Lloyd and Lord Trenchard.<sup>11</sup>

Assuming that England remains parliamentary, only one word need be said about future policy. Capitalism of the old individualistic sort is not merely doomed but gone. The whole country is converted to a planned

<sup>10</sup> A reasonable estimate in November, 1933, was that they numbered about 100,000.

<sup>11</sup> Lord Lloyd, formerly high commissioner in Egypt, is thought to typify imperialism. Lord Trenchard, commissioner of metropolitan police, is generally believed to be militarizing the London police.

economy. Even the National Government has increased government control, has sponsored and conducted national planning, and has centralized by a rapid extension of subsidies.<sup>12</sup> Many Conservatives avow their approval of a socialist program, merely desiring to keep enactment and control of it out of the hands of Socialists. The outsider, at least, will see little difference except in speed of accomplishment between the "state capitalism" of the National Government and the socialism of the Labor party.<sup>13</sup> Parliamentary England almost unanimously faces left.

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**Democratized Socialism Makes Gains in Norway.** In no part of the world is there greater devotion to the principle of representative government than in the Scandinavian countries. Nowhere, too, are there more homogeneous, intelligent, and literate electorates. And in none of the three are party lines more sharply drawn or issues more clearly defined and presented than in Norway, where, as in all Scandinavia, there is complete freedom of discussion. Probably there is no better example in recent years of a bitterly fought election over clear-cut issues, yet conducted in a most orderly fashion, than the triennial election of October 16, 1933, in which were chosen 150 members of the Norwegian Storthing.

As in the 1930 election,<sup>1</sup> the contest was between the Labor (*Arbeider*) party, which is the Socialist party, on one side, and three separately organized and distinct *borgerlige* (loosely translated "bourgeois") parties on the other. Farthest to the right of these three is *Høyre* (literally the Right, but loosely translated "Conservative"). Almost as far to the right is the *Bondeparti* (loosely translated "Agrarian," or "Farmers'," party). Next in order toward the left is *Venstre* (literally "the Left," but loosely translated "Radical"). This last-mentioned party was for years the real left party and the traditional opponent of the Conservatives. Since the growth of the Labor party, its position has shifted toward the right, and in the recent election its position was to the right of the center.<sup>2</sup> Since the election, there is appearing among some Radical leaders an inclination to move toward the left. This development will be discussed below.

<sup>12</sup> Cf. the Unemployment Insurance Bill introduced in Parliament in November, 1933.

<sup>13</sup> Perhaps the Socialist League would not quite agree. But an example is Mr. Herbert Morrison's supposedly socialistic arrangements for the consolidation of London transport, which were enacted into law almost unchanged at the behest of the National Government. See his *Socialization and Transport* (London, 1933).

<sup>1</sup> See this REVIEW, February, 1931, p. 152.

<sup>2</sup> Although the members of the Storthing are seated according to districts and not by parties, the terms right and left are used in this article—as they are by Norwegian writers—in the same sense as in French politics.

Of the large number of minor parties in the election, only four deserve mention. One of these, the small but vigorous Communist party, which includes in its ranks some of the intelligentsia of Norway, and which prior to 1930 held several seats in a number of Storthings, failed to win a single seat in spite of the fact that it was the only group outside of the Labor party to make a gain in popular votes over 1930. Two new minor parties, the Commonwealth (mentioned below) and the Christian People's party, gained one seat each.

Only one of the minor parties, the new National Union party, was of any marked significance in the election. The National Union group led by Major Vidkun Quisling, who is sometimes called the Hitler of Norway, did not get any parliamentary seats, but its advent had a marked effect upon the whole political situation. The Quisling movement was opposed by all of the major parties, but especially by Labor. Sensing the strong public opinion against dictatorship, the bourgeois parties in general attacked Quisling. In some localities, however, notably in Bergen, the Conservatives, under the provision of the electoral law which allows combined lists in a constituency,<sup>3</sup> joined with the National Unionists in order to present a united front against the Socialists. This action no doubt alienated voters in many parts of Norway who would otherwise have voted with the Conservatives. In Bergen, it resulted in the election of B. Dybwald Brochmann, the picturesque founder of the new Commonwealth party. Brochmann and his followers, whose unusual slogan was "With Christ, against the Church, against the Pharisees," bitterly attacked the Norwegian Nazis.

By far the most significant result of the Quisling movement was its effect upon the Labor party. In the 1930 election, the Laborites admitted that their program was a revolutionary one and laid themselves open to attack as favoring a dictatorship of the proletariat. In 1933, without receding from their general Socialist program, they came forward as the champions of democracy and of parliamentary government, and insisted that the real danger to Norwegian traditions was the possibilities of a Nazi dictatorship. In vain did the bourgeois parties endeavor to gain support by arguing that a vote for Labor was indirectly a vote for Nazi-ism. The Laborites were able to give the contrary impression—probably a correct one—that a vote for Labor was in reality a vote against the Norwegian Fascists. Quisling and his followers polled nearly 28,000 votes, but so scattered that no seats were won.

The results of the election showed remarkable gains for the Labor party, which polled nearly half a million votes (a gain of almost  $33\frac{1}{3}$  per

\* The members of the Storthing are elected by the list system of proportional representation.

cent) and won 69 seats, an increase of 22 over the 1930 election. This means that the party, long the leading one in Norway, was given more popular support and captured more parliamentary seats than ever before in its history. The heaviest losers were the Conservatives, who suffered a reduction of nearly 25 per cent in their popular vote and a loss of 13 seats. The Radicals lost nine seats and the Agrarians two.

In addition to the Nazi movement, four other factors contributed to this decided shift toward the left. They are: (1) The impetus given by Socialist gains in recent elections in Denmark and in Sweden. In neither of these countries, however, were the gains so marked as in Norway. (2) Discontent with present economic conditions. Eleven per cent of the people are supported by public relief, and there are 150,000 unemployed. (3) Dissatisfaction with the bourgeois parties, which, in spite of their marked joint gains in the previous elections, had failed to coöperate effectively. (4) For the first time in its history, the Labor party received the united support of organized labor in the form of strong financial backing as well as votes on election day.

Party	Popular Vote			Members Elected		
	1927	1930	1933	1927	1930	1933
Labor	368,100	373,210	499,421	59	47	69
Conservative <sup>4</sup>	254,910	351,747	270,658	31	44	31
Radical (Left)	172,886	237,816	218,545	30	33	24
Radical Peoples'	13,413	9,384		1	1	1
Agrarian	148,874	188,868	175,108	26	25	23
Communist	40,061	20,589	23,301	3	—	—
National Union (Nazi)	—	—	27,775	—	—	—
Commonwealth party	—	—	18,974	—	—	1
Christian Peoples'	—	—	10,237	—	—	1
				150	150	150

The large advance of Labor in the 1933 election did not, however, give it a majority in the Storthing. If the bourgeois parties stick together, they may possibly continue as premier Ludwig Mowinckel, the leader of the Radicals, who has held this high post intermittently for many years. But there are evidences that some of the Radical leaders interpret the election as an indication that the popular desire is for a course somewhere between that of the Radicals in the past and the Labor party. If this view is accepted and Labor is willing, Norway may see a Radical-Labor coalition, either Mowinckel, the Radical, or Johan Nygaardsvold, the fifty-four year old mill-worker and labor union leader, who is the parliamentary leader of the Labor party, as premier.

<sup>4</sup> Includes the small Independent Liberal party (*Frisinnede*), which coöperates closely with the Conservatives.

What will happen may not be known until the new Storthing meets in January. At present (December 10, 1933), the other bourgeois parties are urging that the Radicals coöperate with them. It is very evident that the Radical party is in a strategic position. The outcome, of course, will be known before this note is published.<sup>5</sup>

The table on the preceding page shows the results of the election compared with the two previous ones.

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<sup>5</sup> Much of the information on which this note is based has been obtained from recent issues of two Oslo newspapers, i.e., *Ukens Nytt* (Conservative semi-weekly) and *Arbeiderbladet* (Labor daily).

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Professor Frederick L. Schuman, who spent the summer and autumn in Germany, has resumed his work at the University of Chicago.

Professor Harvey Walker has been advanced to a full professorship at Ohio State University.

Dr. A. C. Millspaugh, of the Institute for Government Research of the Brookings Institution, is engaged upon a study of the organization of public welfare administration in the United States.

During the first half of the academic year, Dr. Raymond L. Buell, of the Foreign Policy Association, conducted a seminar at Harvard University on the nature of war and military systems.

Congressman Charles West, formerly in charge of the work in political science at Denison University, has given up his academic connection because of pressure of official duties. Dr. Albert A. Roden, formerly instructor at Princeton, has been appointed assistant professor and will take over the government courses in the new department of history and government.

Dr. Paul T. Stafford, instructor in politics at Princeton University, has completed a dissertation on *State Welfare Administration in New Jersey*. The study presents a very full account of the organization and conduct of public welfare activities under the control of the state and embraces comparisons with welfare systems in other states. It is to be published shortly by the department of institutions and agencies of the state of New Jersey.

Dr. K. R. B. Flint, professor of political science and director of the bureau of municipal affairs at Norwich University, is chairman of the Vermont state chamber of commerce committee on local finance and town reports. The chamber is waging a vigorous campaign for better municipal reports and a stabilizing of municipal expenditures. This is one of several instances in which the Norwich bureau has coöperated with the chamber in attempting to improve the standards of local government in Vermont.

Under the auspices of the U. S. Census Bureau, Dr. Lent D. Upson, director of the Detroit Bureau of Governmental Research, will conduct a federal survey of tax delinquency in 309 cities in the United states with a population of over 30,000 each.

Mr. Robert W. McCulloch, graduate student at the University of Michigan, is collecting material in Great Britain, France, and Germany on the

subject of his doctoral dissertation, i.e., questions and interpellations in parliamentary bodies.

Professor Marshall E. Dimock, of the University of Chicago, will leave early in January for a quarter's research on administrative problems growing out of business functions in the Panama Canal Zone. The invitation was extended by Secretary of War Dern, and the project will be supported as one of the University's studies in the relation between public administration and industry.

An arrangement has been effected under which the National Municipal League offers the services of Professor Thomas H. Reed, of the University of Michigan, as financial consultant in critical financial situations. The plan is similar to that under which Professor A. R. Hatton long acted for the League as a charter consultant.

A western conference on government, in which a number of national organizations will coöperate, is planned for March or April at the University of California.

A National Association of Housing Officials was organized recently and established in Chicago in connection with other governmental organizations. The acting director of the Association is Mr. Charles S. Ascher, lecturer in political science at the University of Chicago.

Professor Walther Schuecking, director of the Institute for International Law at the University of Keil, German member of the World Court, and former member of the Reichstag, was summarily dismissed at the end of November on the ground that his previous political activity did not "guarantee his whole-hearted enthusiasm for the National Socialist State."

Following the resignation of Mr. James G. McDonald in November to accept a League of Nations appointment as high commissioner for German refugees, the staff of the Foreign Policy Association was reorganized. Dr. Raymond L. Buell, research director since 1927, became president; Mr. William T. Stone, Washington representative of the organization, vice-president; and Professor Joseph P. Chamberlain of Columbia University, chairman of the board of directors, with Mr. McDonald as honorary chairman.

Under the auspices of the Committee on Policy of the American Political Science Association, a conference on problems of taxation in relation to municipalities was held at Bowdoin College on December 1-2. Topics discussed included the taxpayers' revolt and the crisis in municipal finances in New England cities and towns, the system of taxation in

Maine, broadening the tax base, the Connecticut plan of equalizing taxes for state purposes, and the crisis in education growing out of the tax situation.

Twenty-ninth Annual Meeting of the American Political Science Association. Sixteen years ago, the fourteenth annual meeting of the Association was held at the Bellevue-Stratford Hotel in Philadelphia. The country was at war with Germany, and the program of the meeting was studded with titles of papers and discussions called out by the tense international situation. On December 27-29, 1933, the Association's twenty-ninth meeting was held in the same hotel in the same city, and the program abounded in titles of papers and discussions called out by another war in which the country was engaged—a war this time upon economic depression, and one for which the nation had lately been mobilized almost as dramatically as in 1917. On the former occasion, 125 members registered at the meeting; on the latter, 360, comparing with 200 at Detroit in 1932, 353 in Washington in 1931, and 317 at Cleveland in 1930. Following practice of recent years, nearly all of the sessions took the form of round-table or section meetings, which were generally well attended.

The program in full was as follows:

WEDNESDAY, DECEMBER 27, AT 10 O'CLOCK

1. *Government and Education.*

*Chairman:* Ben A. Arneson, Ohio Wesleyan University.

- (1) "The Goal of Civic Education in the United States," C. E. Merriam, University of Chicago; (2) "The Development of Civic Education," George F. Zook, United States Commissioner of Education.

*Discussion leaders:* George S. Counts, Columbia University; Earl W. Creecraft, Municipal University of Akron.

2. *International Relations.*

*Chairman:* Clyde Eagleton, New York University.

*General Topic:* "METHODS OF INTERNATIONAL LEGISLATION."

- (1) "Problems of International Legislation," Valentine Jobst, III, University of Illinois; (2) "Methods of the International Labor Organization," Francis Wilson, University of Washington.

*Discussion leaders:* J. I. Knudson, Brooklyn Polytechnic Institute; Phillips Bradley, Amherst College.

3. *Local Government.*

*Chairman:* Wylie Kilpatrick, Public Works Administration.

*General Topic:* "ADAPTING LOCAL GOVERNMENT TO THE STRAINS OF THE DEPRESSION PERIOD."

- "Flaws of the Fiscal Structure Revealed by the Impact of the Depression," Joseph McGoldrick, Columbia University; William C.

Beyer, Director, Bureau of Municipal Research, Philadelphia; Edward Carter, University of Pennsylvania; Welles A. Gray, United States Chamber of Commerce.

4. *Legislation.*

*Chairman:* Rodney L. Mott, American Legislators' Association.

*General Topic:* "LEGISLATION AND RESEARCH." (Joint round table with the American Association for Labor Legislation.)

(1) "What Research a Legislator Needs," Philip Sterling, Pennsylvania General Assembly; (2) "The Interim Commission as a Research Agency," Seabury C. Mastick, New York State Senate; (3) "The Research Activities of the Legislative Reference Bureau," Edwin E. Witte, University of Wisconsin (4) "Private Organizations and Legislative Research," John B. Andrews, American Association for Labor Legislation.

5. *Public Administration.*

*Chairman:* Finla G. Crawford, Syracuse University.

*Presiding Officer:* George W. Spicer, University of Virginia.

"The Federal Emergency Relief Administration," Leon Sachs, Johns Hopkins University.

*Discussion Leaders:* John W. Manning, University of Kentucky; Royden J. Dangerfield, University of Oklahoma; Malcom H. Bryan, University of Georgia; E. Glenn Callen, Nebraska Wesleyan University.

WEDNESDAY, DECEMBER 27, AT 12.30 O'CLOCK

*Subscription Luncheon.*

*Presiding Officer:* Jesse S. Reeves, University of Michigan.

"The Rôle of the Senate in the Making of Treaties," D. F. Fleming, Vanderbilt University.

*Discussion Leaders:* Royden J. Dangerfield, University of Oklahoma; Elbert D. Thomas, United States Senator from Utah.

WEDNESDAY, DECEMBER 27, AT 2.30 O'CLOCK

1. *Political Parties and Electoral Problems.*

*Chairman:* James K. Pollock, University of Michigan.

*General Topic:* "THE PARTY AS CONDUCTOR AND CRITIC OF THE GOVERNMENT.

(1) "Party Control in the 73rd Congress," Pendleton Herring, Harvard University; Charles West, Member of Congress from Ohio; (2) "The Republican Party as Critic of the Administration," speaker to be announced.

2. *Public Law.*

*Chairman:* Edwin M. Borchard, Yale University.

*General Topic:* "PROPOSED STATUTES GOVERNING FEDERAL, STATE, COUNTY, AND MUNICIPAL RESPONSIBILITY FOR WRONGFUL AND INJURIOUS ACTS OF PUBLIC OFFICIALS AND EMPLOYEES."

"The Federal Tort Claims Bill," F. F. Blachly, the Brookings Institution; Walter F. Dodd, Chicago; Albert R. Ellingwood, Northwestern University; John A. Fairlie, University of Illinois; Oliver P. Field, University of Minnesota; Charles G. Haines, University of California; Murray Seasongood, Cincinnati; E. Blythe Stason, University of Michigan; C. W. Tooker, New York University.

3. *Political Theory.*

*Chairman:* Benjamin E. Lippincott, University of Minnesota.

*General Topic:* "THE RELATION OF GOVERNMENT TO THE ECONOMIC ORDER."

(1) "The Distribution of Control and Responsibility in a Modern Economy," Gardiner C. Means, Columbia University; (2) "The Economic Limitations of Governmental Control," Gerhard Colm, Graduate Faculty of Political and Social Science, New York (formerly of the University of Kiel).

*Discussion Leaders:* Phillips Bradley, Amherst College; W. Y. Elliott, Harvard University; J. Mark Jacobson; A. N. Holcombe, Harvard University; Walter Thompson, Stanford University.

4. *Comparative Government.*

*Chairman:* Roger H. Wells, Bryn Mawr College.

*General Topic:* "PUBLIC PERSONNEL PROBLEMS: A COMPARATIVE SURVEY, 1929-1933."

(1) "The Civil Service Under a Change of Régime in Spain," A. N. Christensen, University of Minnesota; (2) "The Nazification of the German Civil Service," Regierungsrat Dr. Fritz M. Marx, Hamburg; (3) "The French Public Service and the Economic Crisis," Walter R. Sharp, University of Wisconsin.

*Discussion Leaders:* Pedro Fernandez, New York University; Johannes Mattern, Johns Hopkins University; F. F. Blachly, Brookings Institution.

5. *Political Aspects of the New South.*

*Chairman:* John W. Manning, University of Kentucky.

*General Topic:* "NATIONALIZATION AND CENTRALIZATION IN THE SOUTH."

(1) "The Southern Philosophy of States' Rights and Growing Centralization," Charles W. Pipkin, Louisiana State University; (2) "Some Aspects of the Tennessee Valley Development," D. W. Knepper, Mississippi State College for Women.

*Discussion Leaders:* Robert Rankin, Duke University; Miss Harriet Elliott, University of North Carolina; A. B. Butts, Mississippi State College; Irby R. Hudson, Vanderbilt University; L. V. Murphy, U. S. Civil Service Commission.

WEDNESDAY, DECEMBER 27, AT 8 O'CLOCK

*Presidential Address.*

*Presiding Officer:* Roland S. Morris, Former Ambassador to Japan.

(1) "Race Contacts and the Historical Process," E. B. Reuter, Uni-

versity of Iowa, President of the American Sociological Society; (2) "A Liberal Theory of Constructive Statecraft," A. P. Usher, Harvard University, Vice-President of the American Economic Association; (3) "Fact and Fiction in Government," Isidor Loeb, Washington University, President of the American Political Science Association.

#### THURSDAY, DECEMBER 28, AT 10 O'CLOCK

##### 1. *Government and Education.*

*Chairman:* Ben A. Arneson, Ohio Wesleyan University.

(1) "How a State Department Looks upon the Program for the Improvement of Civic Education," George M. Wiley, Assistant Commissioner of Education of the State of New York; (2) "What the College Teacher May Do to Improve the Teaching of High School Civics," Howard White, Miami University; (3) "Political Clubs as Agencies in Civic Education," William E. Mosher, Syracuse University.

*Discussion Leaders:* F. A. Middlebush, University of Missouri; M. M. Chambers, Ohio State University.

##### 2. *International Relations.*

*Chairman:* Clyde Eagleton, New York University.

*General Topic:* "REVISION OF TREATIES".

(1) "Revision in Current Practice," Harold Tobin, Dartmouth College; (2) "Revision Clauses in Treaties Since the War," R. R. Wilson, Duke University.

*Discussion Leaders:* Thorsten Kalijarvi, University of New Hampshire; Winchester H. Heicher, New York University.

##### 3. *Local Government.*

*Chairman:* Wylie Kilpatrick, Public Works Administration.

*General Topic:* "ADAPTING LOCAL GOVERNMENT TO THE STRAINS OF THE DEPRESSION PERIOD."

(1) "Shaping Functions to Satisfy Demands upon Local Government During the Depression," Roland Egger, University of Virginia; Miss Mabel L. Walker, Secretary, General Welfare Tax League; Charles Elliott, Secretary, National Planning Board; John F. Sly, West Virginia University.

##### 4. *Legislation.*

*Chairman:* Rodney L. Mott, American Legislators' Association.

*General Topic:* "LEGISLATIVE PLANNING."

(1) "Legislative Reference Bureaus as Legislative Planners," Horace E. Flack, Executive, Maryland Department of Legislative Reference; (2) "Pre-Session Conferences of Legislators and Experts," John W. Manning, University of Kentucky; (3) "Legislative Planning Council," Henry Reining, Jr., University of Southern California.

**5. Public Administration.**

*Chairman:* Finla G. Crawford, Syracuse University.

*Presiding Officer:* Leonard D. White, University of Chicago.

(1) "The New York Emergency Relief Administration," Robert F. Steadman, Syracuse University; (2) "The Ohio Relief Administration," S. Gale Lowrie, University of Cincinnati; (3) "The New Jersey Relief Administration," Joseph D. Sears, Deputy State Director, New Jersey Relief Administration; (4) "The Illinois Relief Administration," Charles W. Kneier, University of Illinois.

**THURSDAY, DECEMBER 28, AT 12.30 O'CLOCK**

*Subscription Luncheon.*

Report of the Committee on Policy and its Sub-Committees.

*Presiding Officer:* Thomas H. Reed, *General Chairman.*

(1) "Sub-Committee on Political Education," Harold W. Dodds, Princeton University; (2) "Sub-Committee on Publications," Benjamin F. Shambaugh, State University of Iowa; (3) "Sub-Committee on Personnel," John M. Gaus, University of Wisconsin; (4) "Sub-Committee on Research," Arnold Bennett Hall, The Brookings Institution.

**THURSDAY, DECEMBER 28, AT 2.30 O'CLOCK**

*Annual Business Meeting and Reports of Officers.*

*Presiding Officer:* President Isidor Loeb.

**THURSDAY, DECEMBER 28, AT 8 O'CLOCK**

*General Session.*

*Presiding Officer:* Robert C. Brooks, Swarthmore College.

"Political Science in the Service of the State," Raymond Moley, Columbia University, and Editor of *Today*.

*Discussion Leaders:* Peter Odegard, Ohio State University; Benjamin F. Shambaugh, State University of Iowa.

**FRIDAY, DECEMBER 29, AT 10 O'CLOCK****1. Political Parties and Electoral Problems.**

*Chairman:* James K. Pollock, University of Michigan.

*General Topic:* "PARTY ORGANIZATION AND PERSONNEL"

(1) "The Function of a National Committee in Party Government," James A. Farley, Postmaster-General; (2) "The National Committee," Thomas S. Barclay, Stanford University; (3) "Ward Leaders in Philadelphia," J. T. Salter, University of Wisconsin; (4) "Party Organization in New York City," Roy V. Peel, New York University; (5) "Party Organization in Indiana," Robert Phillips, Purdue University.

*Discussion Leaders:* C. Bascom Slemp and Harry A. Mackey.

**2. Public Law.**

*Chairman:* Edwin M. Borchard, Yale University.

*General Topic:* "PROPOSED STATUTES GOVERNING FEDERAL, STATE,

COUNTY, AND MUNICIPAL RESPONSIBILITY FOR WRONGFUL AND INJURIOUS ACTS OF PUBLIC OFFICIALS AND EMPLOYEES.

"The Proposed Statutes on State, County, and Municipal Liability," F. F. Blachly, The Brookings Institution; Walter F. Dodd, Chicago; Albert R. Ellingwood, Northwestern University; John A. Fairlie, University of Illinois; Oliver P. Field, University of Minnesota; Charles G. Haines, University of California; Murray Seasongood, Cincinnati; E. Blythe Stason, University of Michigan; C. W. Tooker, New York University.

3. *Political Theory.*

*Chairman:* Benjamin E. Lippincott, University of Minnesota.

*General Topic:* "THE RELATION OF GOVERNMENT TO THE ECONOMIC ORDER."

"The Relationship Between the State and Cartel Development in Germany," Otto Nathan, Princeton University (formerly economist of the Reichswirtschaftsministerium).

*Discussion Leaders:* Emil Lederer, New School for Social Research (formerly University of Berlin); Arthur Macmahon, Columbia University; John Dickinson, Assistant Secretary of Commerce; John Thurston, Brookings Institution.

4. *Comparative Government.*

*Chairman:* Roger H. Wells, Bryn Mawr College.

*General Topic:* "PUBLIC PERSONNEL PROBLEMS: A COMPARATIVE SURVEY, 1929-1933."

(1) "Public Personnel Problems in the Balkans," Joseph S. Roucek, Pennsylvania State College; (2) "Contemporary Trends in the British Public Service," Leonard D. White, University of Chicago; (3) "American Federal Personnel Problems," Luther C. Steward, President, National Federation of Federal Employees.

*Discussion Leaders:* Harvey Walker, Ohio State University; William C. Beyer, Director, Bureau of Municipal Research, Philadelphia.

5. *Political Aspects of the New South.*

*Chairman:* John W. Manning, University of Kentucky.

*General Topic:* "NATIONALIZATION AND CENTRALIZATION IN THE NEW SOUTH.

(1) "The Effects of Reorganization Upon the Philosophy of Local Self-Government in the South," K. P. Vinsel, University of Louisville; (2) "Centralization and Integration in State Governments in the South," F. W. Prescott, University of Chattanooga.

*Discussion Leaders:* C. B. Gosnell, Emory University; W. C. Jackson, University of North Carolina; George Sherrill, Clemson College; G. W. Spicer, University of Virginia; Robert Tucker, Washington and Lee University.

FRIDAY, DECEMBER 29, AT 12.30 O'CLOCK

*Subscription Luncheons.*

JOINT SESSION WITH THE GENERAL WELFARE TAX LEAGUE.

*Presiding Officer:* Harold S. Buttenheim, Editor, *The American City*.

*General Topic: "GENERAL SALES TAX IN THE UNITED STATES."*

(1) "Summary and Underlying Causes of Recent Trend to General Sales Taxes," Carl Shoup, Columbia University; (2) "General Sales Taxation in Relation to Ability Theory of Taxation," James W. Martin, University of Kentucky; (3) "Administrative Problems of General Sales Taxation," Mark Graves, New York State Tax Commission.

FRIDAY, DECEMBER 29, AT 2.30 O'CLOCK

*General Session.*

*Presiding Officer:* Robert Luce, Member of Congress from Massachusetts and First Vice-President of the Association.

"Political Aspects of the New Deal," John Dickinson, Assistant Secretary of Commerce.

*Discussion Leaders:* Edward S. Corwin, Princeton University; Lewis L. Lorwin, The Brookings Institution.

The Secretary-Treasurer reported a total membership of 1,834, composed as follows: life members, 46; sustaining members, 9; annual and associate members, 1,779. The effects of the continued depression and of academic retrenchments were seen in a decline of membership by 55, as compared with six in the preceding year. This record was, however, substantially better than that of nearly all other learned societies during the period. The Secretary-Treasurer's financial report for the year showed receipts of \$9,558.57 and expenditures of \$9,407.53, and a budget for 1934 was adopted estimating receipts at \$7,583.00 and expenditures at \$7,460.00.

At the annual business meeting, officers for 1934 were elected as follows: president, Walter J. Shepard, Ohio State University; first vice-president, C. H. McIlwain, Harvard University; second vice-president, Robert E. Cushman, Cornell University; third vice-president, Quincy Wright, University of Chicago; secretary-treasurer, Clyde L. King, University of Pennsylvania; members of the Executive Council for the term ending December, 1936: Eugene Fair, Kirksville State Teachers College; R. K. Gooch, University of Virginia; O. C. Hormell, Bowdoin College; N. D. Houghton, University of Arizona; and H. C. Nixon, Tulane University.

In connection with a report of the Managing Editor of the REVIEW summarizing the contents of Volume XXVII (1933), commenting on various aspects of editorial policy, and indicating economies adopted during the year, the decision was reached to continue publication under existing financial arrangements except that the sum of \$600 previously granted by the Committee on Policy for editorial assistance was diverted to the general cost of printing and distribution. Two members of the Board of Editors whose terms expired at this time, Walter F. Dodd and Leonard D. White, were reelected, and Robert C. Brooks, Arthur N. Holcombe, and Charles G. Haines were newly elected, for the customary two-year term.

As reconstituted for 1934, the Committee on Policy is organized as follows:

General Chairman: Thomas H. Reed, University of Michigan

Ex-officio members:

Walter J. Shepard, Ohio State University

Clyde L. King, University of Pennsylvania

Frederic A. Ogg, University of Wisconsin

Sub-committee on Research:

Arnold B. Hall (chairman), Brookings Institution

Charles E. Merriam, University of Chicago

Charles A. Beard, New Milford, Conn.

James Hart, Johns Hopkins University

Sub-committee on Political Education:

Arthur N. Holcombe (chairman), Harvard University

Earl W. Crecraft, University of Akron

Cullen B. Gosnell, Emory University

Sub-committee on Personnel:

John M. Gaus (chairman), University of Wisconsin

William Anderson, University of Minnesota

Luther Gulick, Columbia University

Sub-committee on Publications:

Francis W. Coker (chairman), Yale University

Ben A. Arneson, Ohio Wesleyan University

Finla G. Crawford, Syracuse University

Among reports received and filed were those of Thomas H. Reed as general chairman of the Committee on Policy (see p. 124); William Anderson as representative of the Association in the Social Science Research Council; John A. Fairlie for the *Encyclopaedia of the Social Sciences*; and Frederic A. Ogg as representative in the American Council of Learned Societies and on the board of directors of *Social Science Abstracts*.

Discussion of the place of meeting in 1934 brought out an informal expression of preference, in a joint session of the Executive Council and Policy Committee, for Chicago, with Washington second and Atlanta third; and at the business session a sense motion was adopted favoring a meeting that should be independent of the meetings of other associations, although not necessarily in a different city. In accordance with custom, however, final decision as to place was left to the Executive Council.

Subsequent to the meeting, a committee on program for 1934 was appointed as follows: Walter R. Sharp (chairman), University of Wiscon-

sin; Louise Overacker, Wellesley College; Harold D. Lasswell, University of Chicago; Lent D. Upson, Detroit Bureau of Municipal Research; and Amry Vandenbosch, University of Kentucky. Also a committee to nominate officers for 1935 as follows: Arthur W. Macmahon (chairman), Columbia University; Frederick A. Middlebush, University of Missouri; Edwin S. Corwin, Princeton University; James K. Pollock, University of Michigan; and Frank M. Stewart, University of California at Los Angeles.—F.A.O.

REPORT OF THE COMMITTEE ON POLICY OF THE  
AMERICAN POLITICAL SCIENCE ASSOCIATION  
FOR THE YEAR 1933

THOMAS H. REED, GENERAL CHAIRMAN  
*University of Michigan*

Three years have now elapsed since the Committee on Policy was set up in its present form at the Cleveland meeting of the Association. With the 1933 meeting, the terms of the general chairman and of the chairmen of certain sub-committees expire. The grant from the Carnegie Corporation now has only a year and a half to run, and a request for its renewal must be made this year. It is appropriate, therefore, that this report summarize what has been accomplished in the past three years of committee activity.

Behind the organization of the Committee on Policy was the purpose of making the American Political Science Association—in other words, the political science profession—more mobile, more articulate, and more effective. It has sought to approach these ends by organizing sub-committees and giving them an opportunity for meeting; by promoting conferences with politicians, and with educationists and school authorities; by aiding the development of state and regional associations in the social science field; by encouraging research; by studying the relation of the political scientist to his job, seeking to enlarge the scope of his usefulness (particularly in the public service), and serving as a medium through which young members of the profession might find employment; by stimulating the study of government in the schools; by promoting adult education in citizenship by the use of the radio; by improving the means of publication open to political scientists, especially through the medium of the REVIEW.

To these activities the Committee's funds and the energies of its members have been devoted not without success. The mere tale of the individuals in and out of the profession who have been brought together through committee meetings and conferences is impressive. During the past year alone, more than 20 such meetings and conferences have been held, with attendance of from two to more than 100. This does not include the regional or state political science associations to which speakers of national reputation were sent, or numerous meetings of other organizations at which the Committee was represented by its general chairman. There can be no doubt that the Committee on Policy, through its grant from the Carnegie Corporation, has greatly increased the mobility of the profession.

The conferences with politicians promoted by the Sub-Committee on Political Education under the chairmanship of President Dodds of

Princeton—23 in all, nine this year—have proved an unqualified success. President Dodds says in his sub-committee report that he feels that "no experiment with which he has ever been connected has turned out more successfully than this one." These conferences have cost on the average less than \$400 apiece, not counting committee overhead; and since the first year, when plans were being formulated and the novel idea of conferences without publicity was being sold, that overhead has been less than \$60 a month. In my opinion, no more profitable investment has ever been made by any foundation than that in the promotion of these conferences. At Ann Arbor, for example, on the third and fourth of November last, the governor and the nine members of the Legislative Council charged with the preparation of measures for the coming special session of the legislature sat down and frankly discussed the problem of rural local government reform with a group of college professors and other professional students of the question. As the conference proceeded, the bars of reticence were more and more lifted. Each group acquired an invaluable insight into the motives, ideals, and capacities of the other which could have been had in no other way. This type of conference has proved so successful that it is now being freely copied by others—and there is no higher praise than imitation.

The work of the section of the Sub-Committee on Political Education devoted to the encouragement and improvement of government teaching in the schools has likewise been largely carried on by the conference method. This year a regional conference of political scientists, civics teachers, and educational administrators of the states of Louisiana, Mississippi, Arkansas, and Alabama was held at Baton Rouge with the coöperation of the University of Louisiana and led by Dean C. W. Pipkin. Two conferences a year apart have been held under the leadership of Professor William E. Mosher of Syracuse University which have brought the political scientists and educational leaders of New York State appreciably closer together. The same experience has been had with conferences in Ohio under the direction of Professor B. A. Arneson. It is the purpose of the citizenship training section of the Sub-Committee on Political Education to have a "contact man" in every state—a political scientist definitely interested in civics teaching in the schools who will act as our ambassador at the court of the state department of education. A group of the "contact men" from several states (Ohio, Pennsylvania, Indiana, New Jersey, Michigan, West Virginia, Kansas, Missouri, and Kentucky) met at Columbus, Ohio, early in December to consider aims, purposes, and procedures for extending citizenship training in their respective states. The citizenship training section also has made some progress toward the appointment of a specialist in civic education in the federal Bureau of Education.

The Sub-Committee on Research has prepared *A Students' Guide to Materials on American Government* which will be ready for the press early in 1934. The process of determining the scope of this work and of gathering and selecting the material for it has been an arduous one, but with the valuable assistance of Miss Laverne Burchfield it is now approaching a conclusion. A questionnaire to heads of departments of political science in numerous colleges and universities showed a considerable demand for the work, and it will largely pay for itself out of sales the first year. The Committee has also considered numerous projects for the promotion of research without arriving definitely at any program which it can recommend—an indication of the immensity of its task. A committee, however, which even occasionally brings together men like Merriam, Corwin, Hall, and Beard to discuss political science research is a species of insurance that when there are constructive ideas on this subject we will have them.

The Sub-Committee on Personnel has done three things: (1) Provided the Association with a placement service, now administered by the secretary-treasurer, which has been very useful in connecting young men with positions in the public service, now that college positions are so seldom available. Dr. King reports that all but three of the men listed have received jobs. (2) Enabled Professor Anderson to prepare a report on professional opportunities in political science in the United States with reference especially to colleges and universities. This report is now ready for circulation among the members of the Association for comment and discussion. (3) Planned a project for a research study of training for the public service and supported the project for an inquiry into public service personnel by the commission established by and through the Social Science Research Council of which Dr. Luther Gulick is the director of research. The Sub-Committee on Personnel, consisting of Professors Gaus, Anderson, and Gulick, will represent the Political Science Association at the hearings of the commission, and will be prepared to lead in promoting the adoption of any plans which may thus be produced.

The Sub-Committee on Publications, of which Professor Shambaugh has been chairman, in its first year did an important service in canvassing the need of subsidized series of monographs, foreign documents, and the classics of political science and in arriving at a negative conclusion with regard to all of them. It has since devoted itself chiefly to supporting the REVIEW. It recommended that the journal be made a bi-monthly instead of a quarterly and secured from the Committee on Policy the sum of \$600 a year toward defraying the extra expense involved. It has continued to plan for the maintenance of the REVIEW at its present size and quality in the midst of the depression. During the coming year, the Sub-Committee will further study the REVIEW with regard to its improvement, and will consider the problems involved in the publication of the radio broadcasts

of the You and Your Government series. It has recently undertaken to aid state and regional associations in the publication of their proceedings.

It is the belief of the general chairman that one of the most useful activities of the Committee on Policy is the encouragement of state and regional associations, especially in remote parts of the country from which very few political scientists can hope to come to the annual meetings of the Association. These associations bring together large numbers of people who otherwise would never attend a general meeting of the members of their profession. Assistance is being given them in two ways. First, by paying the expenses of leading members of this Association who are urged to participate in the programs of the local associations. Professors Corwin, Garner, and Reed have each attended a recent session of the Southern Political Science Association at Atlanta, and representatives of the Association have appeared on several other programs. Second, by assisting when necessary in the publication of proceedings. This will make generally available some very good papers, but, more than that, the knowledge that papers will be printed will encourage men to accept program assignments and to do more thorough work in preparation. This, in turn, will have an effect on the interest which the political scientists of the region will take in their association. It is also manifest that proper attention to state and regional associations stimulates interest in the American Political Science Association. At the recent meeting in Philadelphia, 15 members were present from Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Kentucky, and Tennessee, the states involved in the Southern Political Science Association—a much larger number than at any previous annual meeting.

The general chairman has continued to take special interest in the You and Your Government series of radio programs officially put on the air by the Committee on Civic Education by Radio, which primarily represents this Association. Since my last report, three series have been put on: one of 24 broadcasts on "Legislatures and Legislative Problems," from January to June, 1933; one of 15 broadcasts on "Constructive Economy in State and Local Government," from June to October, 1933; and one of 19 broadcasts on "The Crisis in Municipal Finance," from October, 1933, to February, 1934. The broadcasts of the first of these series were reprinted by the University of Chicago Press and are obtainable from it either singly or in bound form. The summer and the current series have been reprinted by the National Municipal League, and may be purchased from that organization at 309 East 34th Street, New York City.

The chief problem remains that of finding money for promotion of the program. In other ways the work of the general chairman has been very much lightened by the able assistance of Miss Doris Darmstadter, who has more than duplicated for the radio series the good work she has done,

and is still doing, for the Sub-Committee on Political Education. Most of the details with regard to the programs except the selection of subjects and speakers are now the work of Miss Darmstadter. But the task of finding money outside the Committeee on Policy grant has fallen on your general chairman. Mr. Tyson and the National Advisory Council on Radio in Education have supplied office space, stenographic assistance, and paid postage, telegraph, and telephone bills. The remainder of the necessary money was during the summer and fall of 1933 provided by the Committee on Citizens' Councils for Constructive Economy of the National Municipal League, which has the same chairman as the Committee on Policy. He found it possible to raise money directly for a radio program to be sponsored by the Citizens' Councils group. The price of their support for the radio program has been that it should relate to the subject of local government, and more particularly local government finance. These are subjects of the most intense popular interest at this time, but it must be admitted that an arrangement of this kind would in the long run unduly narrow the choice of subjects for broadcasting; and an attempt, so far unsuccessful, has been made to induce other groups to assume the sponsorship of a series or portions of a series. What financial arrangements will be made for the spring program, beginning February 14, is not altogether decided. An application is pending with one of the foundations from which something may eventuate. It is pretty clear that no financial help beyond that now given can be expected from or through the National Advisory Council on Radio in Education.

Satisfactory financing of the radio programs would require about \$10,000 a year. Another \$15,000 a year should be provided to secure the proper educational follow up and testing of results, so that the value of radio in civic education might finally be established or refuted beyond possibility of doubt. These needs seem simple in view of the importance of the matter, but these are days in which money is hard to get.

While the problem of financing is vexatious and the continuance of the series is always in jeopardy, it is possible to speak with confidence concerning the success of the programs as a means of reaching the public with the truth on subjects of political interest. In the current series on The Crisis in Municipal Finance, nearly 500 schools and individuals, civic organizations, etc., have coöperated in distributing 125,000 folders advertising the series. In fact, the number of folders which can be distributed by this means is limited only by the small amount of money available for printing them. In addition, numerous organizations announce the programs in their own publications. Reprints of the summer series have been distributed to the number of 5,488, and of the current series (which will be completed February 6) to the number of 5,107. Requests are received frequently to reprint in periodicals and occasionally

to rebroadcast individual programs. These are but indications of widespread interest in what we are doing. The number of our listeners is not capable of a definite statistical expression. All estimates of the sort are mere guesses. But the volume and quality of our "fan" mail proves that our audience is well distributed and influential.

An analysis of the mail received as a result of the series on The Crisis in Municipal Finance up to December 15, when the series was approximately half over, showed that letters and orders for reprints had been received from 45 states, the District of Columbia, Hawaii, six provinces in Canada, England, and Wales. Among the letters received were 62 from city officials, 28 from banks, investment houses, and insurance companies, and 46 from school authorities.

Last fall, two prizes of \$100 each, one for high school and one for college and university students, were offered by Frank Morse, of Lehman Bros., and Morris Tremaine, comptroller of the state of New York, for essays on the subject "My Town, What Can I Do to Improve its Credit?" A total of 247 essays were submitted, and the judges—Lawson Purdy, Richard Willing, and Miss Katherine Ludington—were surprised and delighted by their quality, especially from the younger contestants. Prizes were awarded to Leon S. Smelo of the University of Pennsylvania Medical School, and Rose E. Smith of the Newtown High School, New York City.

Sometimes one letter accounts for a host of listeners, as does the following from the president of the Georgia League of Women Voters, where the local leagues unite in listening to the You and Your Government Programs as part of their regular program.

October 23, 1933

Mr. Lambdin Kay, Director,  
WSB  
*Atlanta Journal*,  
Atlanta, Georgia.

Dear Mr. Kay:

I wish to thank you for the entire Georgia League of Women Voters, and this includes all local leagues—for carrying the broadcasts "You and Your Government" every Tuesday afternoon at 5:15, Atlanta time, 6:15 for other parts of the state. So many of us wish to listen in to these splendid discussions of timely subjects that we greatly appreciate your kindness. Last summer, when base-ball games interfered with the broadcasts, we had to get reprints to study, which was not half as interesting as being able to listen with others.

Cordially yours,  
(Signed) Estelle Stevenson,  
President

This practice is common among Leagues of Women Voters throughout the country, as well as many other civic and educational organizations.

Here is another type of letter, from Maury Maverick (of the famous Texas family whose cattle holdings were so vast that its name became a noun in common speech to describe a stray steer), tax collector of Bexar county, Texas.

October 4, 1933

National Municipal League,  
309 E. 34th St.,  
New York City, N.Y.

Gentlemen:

I enclose herewith my check for \$2.50 to cover the cost of copies of the lectures on government to be given over Station WOAI, San Antonio. I am eager to get a copy of City Manager Dykstra's talk, which was given last evening over this same station, and if it will expedite matters please forward this address at once and the balance as soon as you can.

Very truly yours,  
(Signed) Maury Maverick

Another letter came from a business man in Bay City, Michigan.

October 19, 1933

National Municipal League,  
309 E. 34th St.,  
New York City, N.Y.

Gentlemen:

Under date of Oct. 4, 1933, I sent you my check for \$2.50 to cover copies of your 19 radio broadcasts and any other literature you may have on this subject. I am exceedingly anxious to receive this literature. As I explained in my letter, our city council decided on a special election to submit the question of bonding the city for \$595,000.00.

Yours very truly,  
(Signed) Harry J. Tierney

Here are two more letters from such widely separated points as Arlington county, Virginia, and Winnipeg, Canada:

December 9, 1933

National Municipal League,  
309 East 34th Street,  
New York City, New York.

Gentlemen:

Please find inclosed \$.15, for which send me copy of tax interview over radio on evening of December 5. I am reading these tax addresses with considerable interest, and feel sure that you are doing an educational work that is highly beneficial to our states and nation.

Very truly yours,  
(Signed) Harry K. Green

October 24, 1933

Mr. Howard P. Jones, Secretary,  
National Municipal League,  
309 East 34 Street,  
New York City, N. Y.  
U. S. A.

Dear Mr. Jones:

Many thanks for your letter of the 14th instant received together with programme of talks given over the NBC-WJZ Nation-Wide Broadcasting Hook-up. I am keeping the programme for reference and will listen in on the dates and times mentioned therein. I am enclosing fifteen cents and would appreciate receiving copy of talk given on October 3rd by Mr. C. A. Dykstra, city manager, Cincinnati, when he dealt with the subject, "The Financial Plight of the Cities." This talk came over the air excellently in Winnipeg on that occasion. Our managing-secretary, Mr. E. C. Gilliat, and our past president, happened to tune in at that time and were most impressed with this excellent message on civic affairs. I am keeping your pamphlets for reference, and will be glad to send for any of the reports mentioned therein should an occasion rise when they would be of use to us in our work.

Yours very truly,  
Winnipeg Board of Trade,  
J. Hercus  
Assistant Secretary

These letters have been offered as a fair sample of what comes to us by letter or by word of mouth from every part of English-speaking North America. There can be no doubt that the You and Your Government Program has earned its place on the air. It gives to the members of our Association and other leaders of thought on government an opportunity to address an audience infinitely wider than all but an occasional Beard can reach in any other way—and to reach it effectively. By these broadcasts the name of the American Political Science Association has received publicity many times more widespread than it could have hoped for from any other medium. The public has become acquainted with some of the leading figures in our professional life. Students have been stimulated by the opening of the door of wider usefulness for the political scientist.

What has the Committee on Policy done for the Political Science Association through its varied program of activities? In a word, it has made it vital. There is more interest in the Association than at any other time in its history. In a period when every learned society has been losing members by the hundreds, the membership of the Political Science Association has suffered almost no loss—six members in 1932 and 55 in 1933. Is it not because the Political Science Association better satisfies its membership by the quality of its REVIEW, the vigor of its activities, the reality of its contact with the world about it? And to all these ends the Committee on Policy has contributed effectively.

In terminating my three years' tour of duty as chairman, I want to express my gratitude to my fellow members of the Committee and to the Association at large, not only for the loyal way in which they have followed such leadership as I have been able to give, but also in many instances for supplying the leadership themselves. We have been engaged together in a great coöperative undertaking, and the laurels, if there be any, belong to all.

**FINANCIAL STATEMENT, 1933**

**Balance Sheet**

*Balance in Check Book as reported by the Secretary-*

Treasurer, December 15, 1932.....	\$2,567.69
Cash revolving funds.....	450.00
Deposits made in 1933, credited to 1932 balances.....	218.53
	<hr/>
	\$3,236.22
Minus bills incurred in 1932, paid in 1933.....	1,052.90
	<hr/>

Final Balance 1932..... \$ 2,183.32

*Receipts*

Carnegie Corporation grant for 1933.....	15,000.00
Interest on bank deposits .....	48.85
	<hr/>

Total Receipts ..... \$17,232.17

*Expenditures*

Office.....	\$5,536.50
Travel.....	6,140.54
	<hr/>

Total Expenditures..... 11,677.04

Balance, December 15, 1933 ..... \$ 5,555.13

**Reconciliation**

*Balances in cash revolving funds*

General Chairman.....	\$ 300.00
Sub-Committee on Political Education.....	50.00
Sub-Committee on Personnel.....	50.00

*Balance in Check Book as reported by the Secretary-*

Treasurer, December 15, 1933 .....	<u>5,155.13</u>	<u>\$ 5,555.13</u>
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**Appropriation Statement**

	<i>Appropriation</i>	<i>Expenditures</i>	<i>Balance</i>
General Committee Fund			
Unappropriated balance.....	\$2,733.32	Office \$ 110.86	
Interest on bank deposits....	48.85	Travel 1,102.58	
	<hr/> \$2,782.17	<hr/> \$1,213.44	<hr/> \$ 1,568.73
General Chairman .....	\$1,200.00	Office \$ 693.45	
		Travel 600.52	
		<hr/> \$1,293.97	(-)\$93.97

Radio Activity.....	\$1,250.00		\$1,250.00	
Sub-Committee on Research.....	\$3,400.00	Office	\$1,476.09	
		Travel	393.80	
				<hr/>
			\$1,869.89	\$ 1,530.11
Sub-Committee on Political Education, Conferences.....	\$4,500.00	Office	\$ 652.91	
		Travel	3,074.16	
				<hr/>
			\$3,727.07	\$ 772.93
Sub-Committee on Political Education, Citizenship Training....	\$1,400.00	Office	\$ 67.83	
		Travel	908.43	
				<hr/>
			\$976.26	\$ 423.74
Sub-Committee on Publications...	\$1,000.00	Office (REVIEW fund)	\$ 500.00	
		Office (Grant in aid)	100.00	
				<hr/>
			\$ 600.00	\$ 400.00
Sub-Committee on Personnel.....	\$1,700.00	Office	\$ 685.36	
		Travel	61.05	
				<hr/>
			\$ 746.41	\$ 953.59
Aggregate Balance.....				<hr/> \$ 5,555.13

**Budget for 1934**

Balance 1933.....		\$ 5,555.13
Reserve for Publication of "Guide," etc.....	\$1,200.00	
Reserve for unpaid bills.....		855.13
		<hr/>
Total Reserve.....		2,055.13
		<hr/>
Unencumbered balance.....		\$ 3,500.00
Carnegie Grant.....		15,000.00
		<hr/>
Available for appropriation.....		\$18,500.00
General Chairman.....	\$1,500.00	
Sub-Committee on Research.....	3,500.00	
Sub-Committee on Political Education		
Conferences.....	5,500.00	
Civics Study.....	2,250.00	
Sub-Committee on Publications.....	1,100.00	
Sub-Committee on Personnel.....	2,300.00	
		<hr/>
Total.....		\$16,150.00
		<hr/>
General Fund Balance.....		\$ 2,350.00

## BOOK REVIEWS AND NOTICES

*The Intelligent Man's Review of Europe Today.* By G. D. H. AND MARGARET COLE. (New York: Alfred A. Knopf. 1933. Pp. xvii, 624.)

Collaborating on this occasion with his wife, the indefatigable Mr. Cole follows his *A Guide Through World Chaos* (see this REVIEW, February, 1933, p. 118) with a volume apparently intended partly as a supplement to, partly as a more popular interpretation of, that earlier work. Considering the scope of the enterprise and the variety and complexity of the subject-matter, the authors have achieved a well proportioned and reasonably well articulated survey of the economic, political, and diplomatic aspects of the present European scene. As such a general survey, nothing recently published is likely seriously to challenge its supremacy.

It must be added that a mere survey is not all that the authors intend. They propose to instruct as well as to inform. Their pedagogical purpose is especially evident in the section devoted to post-war economics, probably the strongest part of the book. After reviewing each of Europe's major economic woes, the authors present their remedies at some length. To Mr. Cole's readers, these remedies are already familiar. Many of them may still seem like economic heresy, even to an American; but only an economist who thought more of his orthodoxy than of his wisdom would be able to reject them altogether.

The pages devoted more directly to contemporary European politics are less didactic in character. In them the pedagogical purpose becomes noticeable only when the authors are describing the tinkering which the British parliamentary system must undergo in order to be transformed into a suitable instrument for ushering socialism into Britain. These pages contribute an unusually penetrating analysis of the reasons for the failure of parliamentarism in some European states and of the forces making for or against the stability of this system where it still persists. They also draw a clear and detailed contrast between the present Italian political dispensation and its more recent German equivalent on the one hand and the Russian experiment on the other. A history of the European peace movement since 1920 and the causes of its failure follows, and the book concludes with a summary of proposals for reconstruction, socialism's offering being measured against that of both conservative and reformist capitalism.

Although the generous statistical apparatus which has been supplied must evoke admiration for the authors' industry and factual zeal, its effect in a book such as this is apparently intended to be is sometimes not the happiest. The profusion of digits in the text of some of the pages, and the tables and charts which appear at such frequent intervals, sug-

gest more than a passing resemblance to a government report or to a statistical year-book. Protest is also likely to be heard from more than one reader against occasional over-doses of doctrinairism, especially in the treatment of the more purely political subjects. Such criticisms, however, cannot detract seriously from the book's solid merit. Whatever faults it may have, it must still be acknowledged as the most comprehensive diagnosis of contemporary Europe's ills which has yet been published, and the source of some of the most challenging ideas on European social and political reconstruction which the post-war period has produced. It is quite possible that some intelligent men will refuse to concur in part of this diagnosis and that other intelligent men, a larger number probably, will refuse to entertain many of the prescriptions for the patient; but it is scarcely conceivable that any intelligent man who wishes to be informed about post-war problems and tendencies will neglect to read the book from cover to cover.

ARNOLD J. ZURCHER.

*New York University.*

*The Experiment with Democracy in Central Europe.* By ARNOLD JOHN ZURCHER. (New York: Oxford University Press, 1933. Pp. ix, 328.)

Ever since the collapse of the old order in Europe efforts have been made to depict the new—either as blueprinted by constitution-makers or as etched by the acid test of experience. Seldom have both approaches been kept in mind. Again, the political analysts have wavered between a strictly historical approach—fearing to dis sever too sharply the new constitutional organisms from the tissue and texture of events—and a formal topical treatment freeing the institutional innovations from their immediate political contexts and admitting of objective skeletal comparison. Professor Zurcher has attempted the *media sententia*, navigating the tortuous course between the Scylla of excessive historicity and the Charybdis of inert comparative osteology. The result is a trenchant volume which combines the topical with the historical method while keeping firmly rooted to reality. There is ever present the succinct appraisal: "Here is how it has worked out in practice."

Beginning with an epitome of the historical process which brought into being the new commonwealths, Zurcher observes the final crystallization of the forces of democracy, nationalism, and socialism in the constitutional provisions and the governmental mechanisms of the new states. For the institutional forms given to these forces he holds the jurists—the innovating architects—largely responsible, ascribing to them the major weaknesses of the new constitutional systems because of "their failure to provide institutions and governmental forms which fit the prejudices and traditions of the people." Their solutions, he finds, "have proved a

positive menace to stability" (p. 21). The author's discussion of continental federalism and of the new mechanisms for constitutional control, including both judicial and executive review of legislative acts, is illuminating and comprehensive. It is certain to be appreciated by American scholars as a distinct contribution. Three meaty chapters studded with statistics and tabular data are devoted to the electorate, proportional representation, and the initiative, referendum, and recall. The latter, it is now apparent, have failed, owing to the structure of parties and adverse administrative pressure, to develop as important political institutions.

The bulk of the work treats of the basic problems of executive and legislative power and their interrelationship. "The Titular Executive" is handled excellently, the author revealing a thorough intimacy with the intricate politics surrounding chief magistrates. There is an analytical treatment of "Parliament," packed with facts; an encyclopedic account bristling with names of party leaders, devoted to the relations of cabinet and parliament; and a vital portrayal of the work of second chambers. Two balanced, thought-provoking chapters appraise parliamentary control of foreign policy and breathe into "The Rights of the Individual" the social philosophy of the new charters.

The volume concludes with an evaluation of minority guarantees and functional representation—burning questions affecting the social peace of most of the new commonwealths. On both of these subjects Professor Zurcher has done yeoman work in decomplicating and popularizing technically difficult matters. The final summary, while on the whole well-rounded, treats somewhat cavalierly the conditions in Lithuania, Jugoslavia, and Poland. To portray stern Pilsudskist Poland as in any way in "national anarchy which has ensued as a consequence of . . . disruptive forces" (p. 273) overtaxes the credulity of the reader.

The book has an excellent bibliography referring selectively to the best and most authoritative literature appearing in French, German, and English since 1920. There is a really workable analytical cross-reference index markedly enhancing the utility of the volume to both student and layman. Five outline maps, four of which are so primitive and inadequate as to be of scant value, mar the volume. It would gain by their improvement—or omission.

MALBONE W. GRAHAM.

*University of California at Los Angeles.*

*Germany: Twilight or Dawn?* ANONYMOUS. (New York: McGraw-Hill Book Company. 1933. Pp. 226.)

*My Battle.* BY ADOLPH HITLER. Abridged and translated by E. T. S.

Dugdale. (Boston and New York: Houghton Mifflin Company. 1933. Pp. x, 297.)

That the anonymous author of the first-named volume is a German scarcely needed to be mentioned by the American publisher (the book is published also in London under the title *Why Nazi?*), for no one but a German could so graphically portray the emotions and sentiments which caused Germany to rise in revolt "not merely against the humiliation caused by the treaty of Versailles and its interpretation during the last fourteen years, but in revolt also against the despair, resignation, and inertia with which the Western world is watching its civilization crumble." Written in an admirable style, we have here one of the best brief interpretations of present-day Germany that has appeared in English since the war. The purpose of the writer is "not to accuse, or to defend, but to explain," and that purpose has been clearly achieved.

While the crucial events described all center about the first six months of Hitler's chancellorship (January 30, 1933, to August, when the book was completed), the material forming the background includes an account of such topics as the rise and fall of the Republic, the forerunners of the Revolution, the rise of National Socialism, the tragedy of the Jews, the youth movement, and the new constitution—that is, the changes thus far made in the Weimar Constitution. Among the permanent and significant changes wrought by the Hitler rule, the author places national unity, the abolition of the aristocratic class system and the parliamentary form of democracy. But these changes do not exclude the possibility of the development of a new state based upon a democratic idea. The test will come when Hitler attempts to carry out such projects as the redistribution of the land of the East Prussian Junkers, an attempt which was one of the causes of Bruening's fall. Any prediction concerning the future of present-day Germany faces the difficulty of differentiating between those who follow Hitler because he denounces the inequality of the international status and those who believe in the ideas and aims of the National Socialist party.

As to what those aims are, no reader of *My Battle* need be in doubt; for if there is one thing about Hitler's book concerning which there can be no reasonable difference of opinion, it is that the author expresses himself on all subjects which he discusses with a conviction so direct and positive that his meaning is clear. It should be noted that this volume contains only a little more than one-third of the original *Mein Kampf*. But I cannot agree with those who claim that the American edition soft-pedals the original. The very title rather suggests the opposite; for *Kampf* would better have been translated "struggle" instead of "battle," which gives it a military concept; and Hitler is not here concerned primarily with making the nation a military power, but with giving an account

of the rise of the National Socialist movement, his philosophy of state, and his theory of government. Within the limits selected, the translator has given a very fair picture of Hitler in all of his ranges; he has included his worst characteristics, among them his inordinate intolerance of the Jews, and also his most enlightened comments on the theory of the state and the nature of government, such as "human rights are above state rights" and "the best form of state is that which, with natural sureness of hand, raises the best brains of the community to a position of leadership and predominant influence." Hitler's impatience with the leaders of the Republic extends back to the old régime, for he scores "the futile stammerings of Bethmann-Hollweg" and "the silly ignorance of the world shown by our German intelligentsia who believe that a writer is bound to be an orator's superior in intellect."

Taken together, these two volumes go far toward explaining Germany of today. Those, however, who read German will find a better picture of Hitler in the original *Mein Kampf* than in the translation.

KARL F. GEISER.

*Oberlin College.*

*The Italian Corporative State.* By FAUSTO PITIGLIANI. (London. P. S. King and Son. 1933. Pp. xxv, 293.)

Rome once exported ideas on law and organization. The process seems to continue. As Fascism ten years ago appeared on the scene, so "corporativism" more recently, each a new literary label for a new Italian social phenomenon. Much curiosity has been aroused abroad because of the grandiosity of the scheme and its jubilant promise of solution for problems which the non-Italian world finds agonizing, in particular the problem of peace or war between capital and labor.

The book under review has value, but solely as an optimistic, uncritical exposition of the corporative scheme, which the Master of Facism (usually referred to as "the legislator") gradually adopts from the plans of his lieutenants and adapts to his supreme idea of absolute state control. Capital and Enterprise, as well as Labor, must settle themselves as best they may on Uneasy Street, as they observe "the fact that, with the decline of confidence in the theory of economic liberty, the state creates its own instruments for controlling national economic life as a whole" (p. 108).

With a wealth of detail, the various categories of producers are described, in their occupational associations, whether trade unions of workers or syndicates of employers, or, in each field, their federal associations, local, provincial, and national. But as between the two classes corporativism "neither abrogates nor denies the antagonism: it seeks . . . to harmonize the inevitable causes of contrasting views on a basis of equality and in the light of common interests" (p. ix). As opposed to socialism

or syndicalism, corporativism forbids the class struggle, compels collaboration.

The elaborate apparatus for the making of collective labor contracts is described; also the system of conciliation and compulsory adjudication in labor courts. The tendency is said to be for "the judge to favor the weaker party in a dispute" (p. 73). There is also description of the representative National Council of Corporations. This body, with Mussolini at its head controlling operations, has a system of sections, each of which is designed to function as the compulsive organ of class collaboration in one of the half-dozen fields of production, such as industry, commerce, etc. But great difficulty has been experienced in designing and executing the capstone of the social structure. "Only a single corporation, viz., that of the state, has so far been established" (p. 110).

Part II provides the reader with a great body of information, historical and statistical, upon the occupational associations in practice. There are the Fascist national confederations, i.e., employers' and employees' federal associations in the six fields of industry, agriculture, commerce, sea and air transport, land communications, credit and insurance, and, for the thirteenth, the one National Confederation of Fascist Syndicates of Professional Men and Artists. The history of each is described, in its approach, through Socialist, Catholic, and other auspices, to the present exclusive Fascist auspices. Thus the bodies lose their spontaneous, voluntary character, and become organs for the work of an all-inclusive state. The work of social assistance is outlined, particularly the *Dopolavoro*, the national organization for developing labor in its better use of leisure for recreation and advancement. There are also notes on the methods (by wage check-off) of deriving funds for the support of the whole system.

HENRY R. SPENCER.

*Ohio State University.*

*Parliament and the Army: 1642-1904.* BY LIEUT.-COLONEL J. S. OMOND.  
(Cambridge (Eng.): Cambridge University Press. 1933. Pp. x, 187.)

This excellent little book, the only thing in its field, surveys historically the problem of parliamentary control of the English army. Encouraged by the late Graham Wallas, and written by a lieutenant-colonel, it combines the serious professional interest of the senior army officer with the independent-mindedness of the political scientist. It is a study in government, not military history. Though brief, it omits no development of importance within its limits of time. One may wish, however, that Colonel Omond will sometime expand his sketchy but suggestive epilogue dealing with the situation after 1914.

The first period covered—that roughly up to the peace of Utrecht—is one in which the characteristic English attitude toward the army be-

comes habitual. Because standing armies had always been used for political purposes, there is a popular suspicion of them, which Omoid does not exaggerate. At the same time, armed forces are occasionally necessary, and with the development of parliamentary control over finance and other matters formerly in the king's hands, Parliament begins to take steps to control the army.

The second period, which covers most of the eighteenth century, is one in which England neither fought at home nor feared war. National suspicion of the army continued, however, and so did the need for an army. Parliament controlled the purse and the numbers of the soldiers, and proved a niggardly master.

The third period is one in which the army is accepted as inevitable, and in which military administration begins to be consciously organized. From 1795 there is both a commander-in-chief, responsible to the crown, and some sort of a civilian official responsible to Parliament, and this duality is tolerated. After the Crimean War and the beginning of general administrative reforms in the government of England in the 1860's, a fourth period begins with an attempt to create an efficient army and to coördinate its administration. The Cardwell reforms and the infinite series of commissions and committees ably summarized by Colonel Omund all produced their gradual result, and the half-century after 1870 saw England's army administration modernized and made efficient. The present-day English army is based on the legislation and administrative acts of 1870.

At the same time, the underlying problem of control came to the surface, since any administrative organization involved centralization and parliamentary control; as yet the fact that the army was still a preserve of the crown was a tenet held doggedly both by the Duke of Cambridge (one of the most successful obstructionists in English history) and the wearer of the crown herself. Even Cambridge's enforced resignation in 1895 did not settle it. The year 1904 is the point after which all control is centered (in theory) in a responsible minister.

The book tells the interesting story of the coming of almost complete parliamentary control to a department of the government which was long partially exempt from it. Colonel Omund's Epilogue tactfully omits any mention of the Curragh. For the problem in its modern form, one need, however, go only to Chapter X of Graham Wallas's *Our Social Heritage*.

E. P. CHASE.

*Lafayette College.*

*John Hay; From Poetry to Politics.* By TYLER DENNETT. (New York: Dodd, Mead and Company. 1933. Pp. xi, 476.)

This is a superb biography of a many-sided American who lived during

the "gilded age" of our history—one who, in his own words, would have preferred "to lie in the orchard and eat the sunny side of peaches" but who, withal, had a "dazzling career" as a poet, biographer, ambassador, and Secretary of State. Born on the western frontier in a southern Indiana village of a "migratory" family from Kentucky, he was taken in early life to the Illinois town of Warsaw on a bluff of the Mississippi River. Through the generosity of an uncle who lived at Springfield, he was able to attend Brown University, from which in due course he was graduated. Returning to Warsaw with nothing to do, he shortly afterwards moved to Springfield where he began the study of law in the office of his uncle, in a room adjoining the office of Abraham Lincoln, who two years later took him to Washington as one of his secretaries. Mr. Dennett remarks that young Hay possessed a "sophistication" of which the Lincoln party, when it set out for Washington, was "in conspicuous need."

After a brief diplomatic experience in minor posts, Hay became an editorial writer. His literary fame was established quickly, and by the end of 1871 "his name was probably known to as many people in the United States and abroad as in 1897 when he was appointed ambassador to the Court of St. James." His transfer from London, which he loved, to Washington, which he disliked, as Secretary of State in 1899 was to him an unwelcome promotion. On the eve of entering upon his duties, he wrote his wife that he almost dreaded to have "her come and plunge into this life of dreary drudgery; it's going to be vile—the whole business; the men are bad enough—their wives are worse; all the fun of my life ended on the platform at Euston." "The real duties of the Secretary of State," he wrote cynically to Henry Adams, "seem to be three: to fight claims upon us by other states; to press more or less fraudulent claims of our citizens upon other countries; and to find offices for the friends of senators when there are none." But it was the attitude of the "unspeakable Senate" more than anything else that irritated him, aged him, and broke him up. He got along better with McKinley than he did with Roosevelt, because the former interfered with him less, was more courteous, and apparently had more confidence in his ability and judgment.

In some letters to Senator Lodge written after Hay's death, Roosevelt expressed the opinion that Hay was not a great secretary of state because he was timid and would not fight for his opinions, that he had a too "ease-loving nature" and was too much inclined to associate only with men of refined and cultivated tastes and to live apart from the world of affairs. Mr. Dennett, however, thinks that what Roosevelt mistook for weakness was in fact "a kind of strength which Roosevelt could not understand." Nevertheless, he considers that it would have been better for Hay's reputation if he had resigned as early as 1903 before death took him away. His constructive work had already been finished, his name was not associated

with any new measures which added to his fame, he was bereaved by the tragic death of his son, and his health was broken. But he held on through a feeling of loyalty to his chief, although manifestly their relations were no longer happy.

Mr. Dennett's evaluation of Hay as a man, a scholar, and a statesman, while in no sense that of a hero worshipper, is at the same time that of a biographer who evidently, and justly so, it is believed, found much in his subject to admire. Hay was a man of versatility. He was one of those men who would have made at least a moderate success of almost anything. At the age of thirty-one he was a successful diplomat; three years later he had achieved a literary reputation which gave promise that he might step into the place of Irving, Holmes, or Lowell; and he finished his career at sixty-six "the most popular Secretary of State since the Civil War, and, by popular vote, one of the greatest statesmen of the Western world and of the modern age." Indolent by nature, he worked hard and "long after he had a valid reason to quit. An individualist, a better man than his party, he chose to cling to the latter, at the cost of such discomfort as only sensitive souls can appraise. A vagrant in life, he bowed before a sense of duty and yielded to its discipline. Evading most of the rough spots, nevertheless he fell into some—and marched through like a man. In a rather brutal, masterful age, he achieved a better part: he overcame himself."

Yet he had certain weaknesses without which he might have achieved still greater success as a statesman. He lacked dogged persistence; he was not a fighter for his convictions, even when he had positive convictions, which was not always the case; he was poor at making gestures; he was not by nature a politician, and during most of his public career his body was wracked by pain and suffering.

Of Mr. Dennett's biography it may be said that it has been admirably done and in accordance with the best standards of historical and biographical writing. He has made use of all available materials, including Hay's journals, letters, and diaries. Unfortunately, Hay destroyed a large mass of his letters, having determined while he was engaged on the Life of Lincoln that his own biography should be written only from official documents. Mr. Dennett announces that he has in preparation for publication a new selection of Hay's letters and diaries.

JAMES W. GARNER.

*University of Illinois.*

*The Position of Foreign States before National Courts, Chiefly in Continental Europe.* By ELEANOR WYLLYS ALLEN. (New York: The Macmillan Company. 1933. Pp. xxii, 302.)

Although the position of foreign states before national courts has been,

as Dr. Allen states, "a subject of contemplated international regulation for more than fifty years" (p. ix), it remained for her to present the first comprehensive study of the subject based, as such a study should be, on the decisions of the courts themselves. It is a relief to read such a book, not only because it contains a perfect mine of information on the subject, but also because in giving this information the author avoids the error committed by certain alleged authorities in discussing the issue of the immunity of states before legal tribunals, namely, one of confusion between the law as interpreted by these tribunals and the law as the alleged authorities in question believe it should be interpreted. In avoiding this error, Dr. Allen may have written a book which will not appeal to those internationalists who are ever seeking the ideal. The practicing lawyer, however, whose work requires him to face realities in the domain of private international law, will probably bless her for writing it.

The book is divided into two main parts: Part I, General Analysis, a factual analysis of the study, annotated with relevant decisions, and Part II, Analysis by Countries, a detailed analysis of the decisions themselves. In the first part, Dr. Allen presents the issues which have been raised by the courts. These issues are grouped under appropriate headings, and concise statements are given which show the rulings of the courts on the questions involved. In the second part, the different decisions referred to in Part I are analyzed with a precision of expression which shows the author to be a legal analyst of rare ability. At the same time, the background and historic development of the practice of the courts in such countries as Germany, Holland, France, Belgium, and Italy is not overlooked.

The first two chapters of Part I attack the main problem which, as Dr. Allen points out, "starts with the general proposition" that foreign states before national courts "are immune from suit" (p. 3). The author shows, however, that this proposition "involves an investigation of the connotations of the term 'state,'" and that after this investigation is concluded the doctrine of immunity, with its qualifications or exceptions, must be analyzed. The results of that analysis are set forth in Chapter II of Part I, with its significant heading, "Inapplicability of Immunity." The following sentence quoted from this chapter will give an idea of the "contrasting decisions" on the subject: "The purchase of shoes for the army, held to be a private act by Italian courts, was held to be the exercise of the highest sovereign function of protecting itself against its enemies in the United States, while in France the courts refused to assume jurisdiction over a similar contract" (p. 42).

In the case of property owned by foreign states, we find a variety of rulings upon such issues as an action directed against the property itself, an attachment of the property as security for a debt, and an execution

against it upon a judgment rendered against the foreign state (Chapter III, Part I). Case after case is cited in the footnotes in support of the statements made in the text. In this connection it should be emphasized that one of the most valuable features of this admirable study is the citation of cases throughout the book and in the "Table of Cases" (pp. 335-345) in a form that is free from the horrible abbreviations which puzzle even lawyers whose practice requires them to be familiar with the decisions of the courts of European states.

The question of how much immunity should be extended to government-owned vessels, which has provoked quite a few philosophical—but not many legal—dissertations on the subject, is dealt with at length. The treatment is strictly legalistic, as is indicated by the chapter entitled "The Application of Immunity to Government-owned Vessels" (Part II, A. Germany, Chapter III), which contains a review of the decisions of the German courts. The discussion of the well known cases of the "Ice King" and the "West Chatala," two vessels owned by the United States Shipping Board, will be read with interest by admiralty lawyers in the United States. In considering the Dutch doctrine on the government-owned merchant-vessel issue, Dr. Allen devotes an entire chapter to the De Booji Case, which, as she states, "left its mark indelibly on Dutch jurisprudence and acquired fame far beyond the boundaries of Holland" (p. 110 ff.). After considering the development of the Dutch practice under the much criticized Article 13A of the "Alegemeene Bepalingen," the author concludes that the whole course of this practice "indicates that whatever legal writers or even the courts may have contended, the government itself has stood firm in its position that international law forbids the subjection of foreign states to the jurisdiction of national courts and has protected their property from seizure" (p. 147).

This conservative position appears to be somewhat similar to that of France, where "the courts have been scrupulous in applying the general international law doctrine of immunity for foreign states and their property" (p. 184). The Italian courts appear to have been somewhat more liberal, although as Dr. Allen points out, "since the normal number of cases in which jurisdiction is assumed [by the Italian courts] are decided in favor of the defendant state, and regulation on the part of the political branch of the government in the form of treaties still further protects the interests of the states, very few condemnations of foreign states occur, despite the frequency of the discussion of the general issue" (p. 263). It may be added that in her discussion of the French and Italian practice Dr. Allen emphasizes certain exceptions which have been made in cases involving the rights of the Union of Socialist Soviet Republics (pp. 171, 251-256, 262).

At the end of the book, Dr. Allen gives us in two pages, which are

models of conciseness, her "Conclusions." She states that "a growing number of courts are restricting the immunity [of foreign states] to instances in which the state has acted in its official capacity as a sovereign political entity" (p. 301). The current idea that this distinction is peculiar to Belgium and Italy "must be enlarged to include Switzerland, Egypt, Roumania, Austria, and Greece" (p. 301). She notes that the "swing towards the more radical doctrine of holding states responsible to the courts for their economic activities was given a great impetus by the appearance on the international stage of the Union of Socialist Soviet Republics. Courts that had never before assumed jurisdiction over an unwilling foreign state tore aside the veil and saw beneath the garments of the sovereign a powerful economic competitor of national business firms which should not be allowed to handicap private enterprise by the claim of the sovereign prerogative" (p. 302).

Dr. Allen refers to the much discussed proposal for the negotiation of an international convention which would "be effective in producing uniformity of court action and in reducing the sovereign immunities of foreign states to any degree decided upon," but is too much of a realist not to call attention to the "extraordinary complications that must be faced in the preparation" of such a convention (p. 302). She suggests that as "much of the difficulty in obtaining satisfactory decisions from the courts lies in domestic laws," the difficulty in question "could be obviated by a careful reworking of the rules governing the competence of the courts. In many countries this has already been done, with salutary effect" (p. 302).

CYRIL WYNNE.

*State Department,  
Washington, D. C.*

*World Revolution and the U.S.S.R.* By MICHAEL T. FLORINSKY. (New York: The Macmillan Company. 1933. Pp. 264.)

*Soviet Economic Policy in the East.* By VIOLET CONOLLY. (New York: Oxford University Press, 1933. Pp. 168.)

This welcome volume from the skillful hand of the author of *The End of the Russian Empire* is timely proof that even the Bolshevik leopard can change its spots in practical politics, and has, in fact, changed its rôle from disrupter to defender and organizer of the peace of nations. Dr. Florinsky sets forth the thesis that the evolution of the doctrine of world revolution has determined both the domestic and the foreign policy of the Soviet Union. During the first six years, the stage was held by the old Bolshevik idea of permanent revolution—revolution to deepen and move leftward by stages, no compromise with capitalism, and the assump-

tion that a national revolution cannot be a self-contained unit but merely a link in the international chain. Faced with the overpowering difficulties of the early years, the Bolsheviks turned for relief, perhaps for salvation, to world revolution; in 1919, they created the Comintern to support revolution elsewhere. When the fanfare died down, and backward Russia was the only country remaining under a Communist régime, it was decided that the participation of capitalism in the reconstruction of Russia was imperative in order to attain the ultimate aim of Communism. One might raise the question as to whether the domestic situation determined the attitude toward world revolution, or the other way around. In any case, the ideological war in 1924-27 between Trotsky (permanent revolution) and Stalin (socialism in a single country) brought about the great change. The latter's victory was expressed within Russia by industrialization and the Five Year Plan as a way out of the *impasse* created by the failure of world revolution to materialize; in foreign policy, it was soon expressed in Soviet promotion of peaceful coexistence and coöperation with capitalist countries, of schemes for immediate and total disarmament, of military and economic non-aggression pacts which preclude Soviet intervention in event of counter-revolution on territories of the co-signatories. The new doctrine was fitted into Communist theory by the Sixth Comintern Congress in 1928, which declared the economic progress of the Soviet Union to be a factor in world revolution. Since that date the Comintern has been gradually transformed into an international body concerned chiefly with the defense of the Soviet Union.

In depicting the conversion of the former knights errant of world revolution into prosaic artisans of an industrialized socialist commonwealth, Dr. Florinsky does not minimize the unbridgeable gap between the practical politics of the U.S.S.R. and the teachings of Communism. He makes no prophecies. Rather does he raise the question as to which speaks for the real Russia: Marx, Engels, and Lenin, with their harsh and terrible vocabulary of violent and inevitable world revolution; or the "young workmen and peasants, awkwardly approaching beautiful machines which they have never even dreamed of before, or standing dazzled by the wonders of the future as unfolded by their leaders. Is it the young men and women who see at last a way to escape from the bleak drudgery of the old Russian village and are eager to conquer the world—though not necessarily by the use of arms?"

Dr. Florinsky used Soviet sources almost exclusively, citing titles in both Russian and English. His style is easy, somewhat conversational; his pages are marked by very stimulating passages of under-statement. The volume has a table of contents, a detailed index, and is sprinkled with helpful sub-titles. Appearing at the moment of our resumption of diplomatic relations with Russia, it should be read by all Americans,

especially those who have maintained over the years that recognition could lead only to disaster.

By analyzing the operation and results to date of the special trading system which the Soviet government has created to deal with contiguous Asiatic countries, Miss Conolly becomes a pioneer in a field of future high potential. Her work, which has been accepted for the diploma of the Graduate Institute of International Studies, Geneva, is devoted to Soviet trade relations with the six areas which are exempt from the rigors of the Foreign Trade Monopoly; a companion study is to follow, on such relations with the rest of Asia, particularly China and Japan.

With a wealth of detail, the author reveals Soviet Russia as the half-way station between the advanced West and the backward East. The Bolsheviks repudiated treaties, debts, and other obligations owed by old Russia to the West, but at the same time forgave tsarist claims and privileges in the East. The distinction is carried over into trade, the scheme of which is to import industrial machinery, and exclude finished products, from the West, and to export manufactured goods and doctrine to the Asiatic neighbors. Since such agrarian countries are not considered competitors, the Bolsheviks early exempted them from the Foreign Trade Monopoly restrictions, reduced prices on goods sent them from Russia, and even maintained for many years that a favorable trade balance with the Eastern border states was not necessary. Politically, such economic indulgence was hailed as a challenge to capitalistic methods in Asia.

Having outlined the general system at work, Miss Conolly proceeds to trace the trade relations country by country, indicating significant developments, such as the Anglo-Soviet rivalry in Persia, the function of Mongolia as a laboratory of experiment in world revolution, and the importance of the Turk-Sib railway in Soviet plans. That Soviet efforts to capture Eastern markets have been successful, especially in textiles, is shown by an expanding trade to the East even when trade is declining elsewhere. The conjuncture of forces is favorable for continuance of that expansion: Russia's geographical position, the shift of Soviet industrial centers to the east of the Urals, and the fact that Eastern peoples are seeking modernization at a time when Soviet Russia is increasing its capacity to supply them with greater quantities of industrial goods. However, a favorable balance of trade to the east is no longer deemed unnecessary by Moscow. Profit has superseded sentiment as the controlling factor in that trade. Moreover, Turkey and Persia, in defending their national interests, have begun to stiffen their own economic policies *vis-à-vis* the great northern neighbor.

In viewing the whole subject, Miss Conolly concludes: "The successful development of Russia's Eastern trade, for which there are so many propitious factors, will ultimately depend on the extent to which economic

pressure and revolutionary propaganda give place to a wise policy and coöperation with the East. It must also be closely affected by the capacity of Russian industry to produce better goods for the Eastern markets, which are likely to become more competitive in the future—though they are the natural Russian markets." More specifically, she adds: "If China cannot dominate the Far Eastern scene more effectually than at present, a clash between Soviet economic interests in Outer Mongolia and the Japanese economic penetration in Inner Mongolia seems inevitable sooner or later . . . However desirable it is that Russian economic and political expansion in nominally Chinese territory should cease, no good purpose could be served by weakening Russia's present strength in this triangular situation."

This meaty little volume, complete with statistical tables compiled from official sources, index, map, and bibliography, is excellently adapted to the requirements of university students. The author is to be commended for a concise treatment of a new and vast subject: Asia as the economic *hinterland* of the Soviet system in its rivalry with the capitalist system for dominance in unsaturated markets. Her second volume promises to present this problem on an even broader scale.

BRUCE HOPPER.

*Harvard University.*

*The Bulwarks of Peace.* By HEBER L. HART. (London: Methuen and Co., Ltd. 1933. Pp. xxvi, 240.)

*La Coopération Internationale.* VARIOUS AUTHORS. (Paris: Librairie Alcan. 1933. Pp. vii, 213.)

*Problems of Peace: Seventh Series.* VARIOUS AUTHORS. (New York: The Oxford University Press. 1933. Pp. xvi, 295.)

These three brief volumes offer interesting contrasts in national points of view concerning the methods of achieving a warless world. The first, by a British barrister and former member of one of the Mixed Arbitral Tribunals, is a restatement of the author's position first laid down in 1917. In the light of subsequent events, the "propositions" put forward then represented a high degree of realistic foresight and penetrating analysis of the post-war world situation. Stated briefly, his thesis is that security is the indispensable precursor of disarmament; that it is attainable only on the conviction that the preponderance of force available for the maintenance of "the rule of law" will be great enough to suppress the aggressor; that this can be achieved only through a league of nations with executive power to determine all disputes, and with the pooled military resources of the members (on a much reduced scale) at its command. The whole system is predicated on the "proposition" that "in the world

society as a whole there is now a prevailing disposition towards organizing for the maintenance of peace." And this organization is to be worked out, in the author's mind, pretty largely along the lines of the present League.

It is unnecessary to go farther than to the second of these books to test the "disposition" which the author believes exists. Eight Frenchmen discussed early in 1933 before the École des Sciences Politiques the economic, financial, military, and diplomatic problems involved in international coöperation; it is significant, perhaps, that the diplomatic problems were considered last. The authors of these papers are all practical men of affairs in the fields which they discuss; each approaches his particular problem from a relentlessly logical French viewpoint. Without suggesting that the whole is infused with any narrow nationalistic tinge, it would be possible to quote passage upon passage which would riddle the reality of any such "disposition" as Mr. Hart posits. The unconditional most-favored-nation clause limits too much the bargaining power of states; financial rapprochement with Germany is to be sought—but only because it is perhaps the necessary price of economic survival in the hostile environment of a "super-nationalistic" America and a Britain withdrawing into imperial economic isolation; the French military establishment must be maintained as a bulwark against a possible threat of invasion ("military service is one of the most reasonable of civic virtues; its completion more necessary to the national life than to the payment of taxes, knowledge of the law, or acceptance of a legal judgment" p. 154); a world unity cannot be built with security on the foundations of many different national mentalities and points of view, hence a positive and independent foreign policy is indispensable. This is an invaluable collection with which to illumine the contemporary mentality of France—and, indeed, of every country—with respect to the "dispositions" of its leaders toward international coöperation.

The third of these volumes, the latest of a well-known series, contains the lectures given at the Geneva Institute of International Relations in the summer of 1932 by some eleven authorities from within and without the League. In a sense, the book is a post-mortem examination of world events in the perspective of three years of depression. If most of the individual papers dealing with such specific problems as disarmament, the Far Eastern dispute, and the economic crisis record failure, or at least hesitation, in the progress of internationalism, their outlook is well summed up in the words of Dr. Rappard: "This disintegration [of the world economic organism] is the desperate protest of national sovereignty against an evolution which condemns national sovereignty." The issue is here drawn sharply. Will the answer of our age be finally given in these terms or in those of the *Realpolitik* of *La Coöperation Internationale*?

Amherst College.

PHILLIPS BRADLEY.

*Peace by Revolution.* By FRANK TANNENBAUM. (New York: Columbia University Press. 1933. Pp. 307.)

Appraisal of the Mexican revolution continues to be difficult because its economic and social phases are still in process. Estimate of the influence which historical factors have had on the current developments must be tentative. For these reasons, the first half of this volume will leave students of Mexico unsatisfied. A rapid survey is attempted of the chief institutional influences which have contributed to Mexican life—the colonial government, the church, the *hacienda*, and the political standards of which it was sought to secure adoption in the first century of independence. The presentation does not give a clear picture and is not free from repetitious discussion.

Mr. Tannenbaum is happier in his analysis of the details of the changes which are taking place in the period since the overthrow of the old régime. The discussion of the land and labor movements is sympathetically done and presents the results of extensive travel and observation. The author's conclusions are that political turmoil still limits advance. Every politician of importance is always in danger of losing his life, and politics continues to revolve around not principles but claims upon salaries from the treasury. Yet there is a widespread urge for improving the position of the long neglected Indian, and the mestizo and Indian groups are acquiring greater self-consciousness. They are unevenly and slowly winning the battle against army influence. The author thinks it may already have been won.

The fundamental law of 1917 was "one of the most significant constitutional documents of the present century." It upset the legal concept of property held in fee simple and laid the basis of the demand of land for all. Labor also was given a new charter of liberties. The ideals expressed have been realized only in "halting, piecemeal, spotty, and incidental," manner and the author thinks that it might have been better "from the point of view of the Revolution" if the large estates had been confiscated at once. Instead, the process of giving land to the landless will be indefinitely dragged out; only one-fifteenth of the landless population groups has as yet had allotments. In the long run, the *hacienda*, he believes, must disappear as the influence of the white man and the church have already done.

The labor movement is portrayed as a conservative one. It has not sought, or at least has not obtained, the adoption of the standards it advocates. In the long run, however, even though it should check the economic development of the country, it may protect the native arts and crafts, give Mexico an opportunity to develop its individuality, and "set a limit on the reach of imperialism."

*University of Wisconsin.*

CHESTER LLOYD JONES.

*The American Federation of Labor.* By LEWIS L. LORWIN. (Washington: The Brookings Institution. 1933. Pp. xix, 573.)

This is a timely book. The American Federation of Labor is described by Dr. Lorwin as representing "the most significant organized effort of American wage-earners to supply an answer to the question of the worker's place in the national economy." At a time when the national economy is so disturbed as during the present crisis, the question of the worker's place in it is of paramount importance.

With the advice and supervision which is part of the "institutional" procedure of the Brookings Institution, Dr. Lorwin has written a history of the Federation, dividing it into four significant historical periods—Foundations, 1864–1898; National Expansion, 1899–1914; The World War and Industrial Democracy, 1914–1924; and Prosperity and the Depression, 1925–1933. In an interpretive section entitled "Policies, Problems, and Prospects," the characteristics and methods of the organization are described; while an appendix contains useful statistical information and an analysis of the present status and problems of the more important affiliated unions.

Dr. Lorwin draws the conclusion that the last ten years have undermined the philosophy formulated by the Federation at the beginning of its career and persistently followed through its subsequent history, and that the present depression has given this philosophy "a final blow." He concludes that "the problem before the Federation is to work out a new program of action in which the principles of voluntary collective relations are reconciled with the economic trend towards greater participation of government in the regulation of economic life, and to readjust its structure and methods accordingly."

The author does not give recognition to the danger of too ready and too facile a readjustment to this type of governmental regulation. Events since the writing of the final chapter, "Interpretation and Outlook," have seemed to indicate that once more, as during the war, this organization of skilled workers which the Federation primarily represents may seek strength and protection in a "partnership" of industry and government, thereby, perchance, missing the historical moment for leadership of workers in the genuine labor struggle.

On the whole, this is a cautious study of a cautious subject. It is useful to have compiled a history at a moment of historical change, though one could have wished for a more dynamic interpretation of the interplay between the capitalist structure and government as the background for a form of organization which apparently left the workers no other alternative than to seek control of "the labor market" through monopolizing skill (apparently the essence of the craft union character of the Federation).

A companion study ought to be written of those movements of the rank and file in the unions and the sporadic and, on the whole, inarticulate struggles of the unskilled and the unorganized. Probably out of these two branches of the past history—the organized and the unorganized—will grow the form of workers' organization which will determine whether labor will accept "greater participation of government in the regulation of economic life," or whether its claim for a new status in the national economy may itself remold economic organization and remake political institutions. But this envisages possibilities which lie outside the scope of Dr. Lorwin's history. For those who are watching the present, his judicial record of the past will be useful for reference. The analysis is critical, yet eminently fair and impartial.

MARY VAN KLEECK.

*Russell Sage Foundation.*

*Public Utilities and the People.* By WILLIAM A. PRENDERGAST. (New York: D. Appleton-Century Company. 1933. Pp. vii, 379.)

Commissioner William A. Prendergast presents in this volume the results of his experience and thought as chairman of the New York Public Service Commission, a position held by him for the space of ten years. It is only fair to his readers to point out that he is at present officially identified with a large electrical company. His record with the commission was an honorable one, and he occupied a high place among the commissioners of the country.

*Public Utilities and the People* has for its purpose to "present a survey of the usual regulatory problems" for the lay public. The work is well-organized and the style unusually well suited to the purpose. Attention is concentrated largely on the electrical utility as being more or less typical and of peculiar importance at the present time. The problems selected range from the power trust to public ownership. Two-thirds of the work is devoted to holding companies, valuation, rates, and public ownership. Other chapters have to do with the nature and function of utilities, rate of return, accounting, and regulation.

The method of presentation is both ingenious and disarming. In most cases, it consists in presenting the attacks of outstanding critics in the form of direct quotations, followed by citations from defenders, and concluded by the arguments of the author, with occasional concessions to the points scored by the critics. Not infrequently, the writer fails to controvert the criticism, contenting himself with having cited the charges. For example, Governor Pinchot is quoted in the matter of the interstate transmission of power as stating that eleven states import over forty per cent of their power, thus indicating the need of federal regulation. But Mr. Prendergast bases his whole counter-argument on the

average for all states, namely, less than twenty per cent. Again in the final chapters dealing with public ownership, a number of quotations from writers arguing pro and con are cited, but no effort is made to clarify the conflicting testimony. The author takes sides with the opponents, justifying himself on the ground that "logically, there is no more reason why the electrical industry should be made the goal of public ownership than the steel industry, the textile industry, the oil industry, the coal industry" (p. 366). There is no doubt of the author's intention to be fair and frank with his critics, but in many instances he has fallen short of meeting their contentions.

Two major defects of the work are worthy of note. In "a survey of usual regulatory problems," an author can hardly fail to call attention to the practices of not a few utility concerns in circumventing regulation and securing profits entirely irreconcilable with the mandate of a fair return on a fair value. But little light is thrown in this work on any of the questionable practices of utility companies which add to the difficulties of regulation. For one, the reviewer would have been pleased to see an emphasis on the public service aspects of utility management in lieu of the justification of the selfish motives of profits and power (p. 65).

The second shortcoming is the generous treatment of the commissions. All is not well with the commissions, even moderately so. For example, it is generally known that these agencies are failing in their most important function of seeing to it that companies earn only a fair return on a fair value. Hardly a commission in the country has on its books the fair value as of 1932 of even a modest proportion of the companies under its jurisdiction. As a consequence, the bodies fail to check on this essential feature of regulation from year to year. Under Mr. Prendergast's chairmanship, this was done for all electrical companies in New York State for the first time in 1929, and then not on the current fair value, but rather on such valuation as happened to be on the books. This is but a sample of the type of criticism of regulatory methods that might have been presented by a writer with the author's background of experience.

Taken as a whole, the book is an able defense of the existing order of things by a sincere and convinced advocate of it, but by one who at the same time is capable of perceiving some flaws and of proposing remedial measures. Our major criticism is that many other and more important flaws might and should have been cited and appropriately drastic remedies proposed. What utility management and regulation need—if they are to be saved—is not defense, but forthright and relentless criticism. From experience, few men are better qualified to engage in such criticism than the author of this book. Despite the general tendency to defend the status quo both of managerial and regulatory practices, the work is an instructive and worth-while contribution to the literature of the subject.

*Syracuse University.*

WILLIAM E. MOSHER.

*Current Problems in Public Finance.* New York University Symposium.  
(New York: Commerce Clearing House. 1933. Pp. viii, 391.)

This volume consists of fifty papers or lectures which were delivered at the National Conference on the Relation of Law and Business held under the auspices of the School of Law and the School of Accounts and Finance, New York University, during the week of December 5 to 9, 1932. The lecturers were representative business men, public officials, attorneys, editors, advertisers, university professors, executives of business associations, taxpayers' leagues, investment trusts, and others.

The fifty papers vary from less than a page to fifteen pages in length. They vary in like degree in quality, though perhaps not always in proportion to length. They appear to have been delivered at fifteen different sessions, the session topics including the following: charting the public finance problem; the proper scope of governmental activity; readjustment of local, state, and federal expenditures and taxes; educational finance; special taxes on banks, public utilities, motor vehicles, gasoline, chain stores, and sales; coördination of federal, state, and local taxes; public credit, inflation, and deflation; defaults; inter-governmental debts and tariffs; research, public education, and pressure group technique.

The conference and its published papers should serve the cause of public education and good citizenship by focusing attention upon the current crisis in public finance and by broadcasting to the general public facts and opinions familiar to all close students of this special field. One might expect also that these discussions would help resolve some moot questions and bring closer together those of conflicting opinions. The published record includes only the formal papers, however, and omits all informal discussions (if any were had) which might have helped to bridge the divergent points of view.

One of the papers of most interest to the reviewer is that of Professor Seligman on the coördination of public revenues. He recommends a combination of "four methods, the realignment of government functions, the system of credits, the division of yield, and the system of supplements."<sup>1</sup> "Drafting capital in aid of recovery by means of a forced loan," by H. G. Aaron of the New York Bar, is perhaps more interesting than practical. The paper on tariffs by Leland R. Robinson impresses one as stressing commercial policy more than public finance, but is of interest in calling attention to the legislative dominance of producers and the "forgotten-man" rôle played by consumers generally.

Obviously, lack of space makes impossible adequate discussion of any single paper or even the mention of more than a few. Valuable new ideas that are really practical of application are always scarce, and such a

<sup>1</sup> This paper was published in the *Political Science Quarterly* for March, 1933, pp. 1-22.

conference as that sponsored by New York University is not likely to bring forth an unusual number of original suggestions. In fact, there is not much in the volume under review that has not already been presented elsewhere. This is, perhaps, true of most conferences and their published proceedings; nevertheless, they are useful in focusing attention upon important matters and in popularizing information.

Roy G. BLAKELY.

*University of Minnesota.*

*A Philosophic Approach to Communism.* BY THEODORE B. H. BRAMELD. With a Foreword by T. V. Smith. (Chicago: University of Chicago Press. 1933. Pp. xi, 242.)

*The End of Our Time.* BY NICHOLAS BERDYAEV. Trans. by Donald Atwater. (New York: Sheed and Ward. 1933. Pp. 258.)

*Christianity and Class War.* BY NICHOLAS BERDYAEV. Trans. by Donald Atwater. (New York: Sheed and Ward. 1933. Pp. 123.)

History indelibly inscribes that successful revolution of even a misery-ridden people waits upon a philosophy of justification. Therein lies the importance of Communistic philosophy. There likewise is found the key to its understanding. It is inconsistent, of course; not the least in condemning other ideologies for being what it is itself, a class philosophy. It instances intellect as pure tool. Marx was primarily a revolutionist, admitted Engels; Lenin, a stategist and leader. Communism used materialism to undermine idealisms which bulwarked the oppressive status quo. Economic materialism taught the undying greed of the ruling bourgeoisie. Indeterminism spurred the proletariat to their own rescue. But the despairing were given heart by the guarantees of dialectic materialism.

On such a showing, the deterministic dilemma so obvious in Communism is easily resolved—both sides of the dilemma possess utility. With this Mr. Brameld agrees, but further suggests that since doctrines are reflective of attitudes, and since the frequent compresence of the deterministic and indeterministic attitudes suggests their consistency, the doctrines themselves may present no logical contradiction. He analyzes Stoicism, Spinozism, and Instrumentalism and finds in them a predominance respectively of acquiescence in (concern with) the individual, acquiescence in (compliance with) the world, and activity (indeterminism). But each philosophy embraces subordinately the primary attitudes of the other two. A similar inclusion is found in Communism, but without prejudice. It is as acquiescent in the world as in the individual; as active as acquiescent.

Brameld finds no difficulty in Communism's duality and mutuality of acquiescences, and he finds a solution for the deterministic dilemma.

But the solution is too sketchy. It is not persuasive that the compresence of the active and acquiescent attitudes proves them consistent, nor that such consistency (as this may mean) lends itself to reflected doctrines. On the other hand, he has overlabored to establish the reality of his problem—indeed, the deterministic contradiction is prevalent everywhere, implicit if not explicit. His key concepts of activity and acquiescence in the individual and the world are extremely unclear. Documentation is copious.

M. Berdyaev deals with no such riddle. Though sharing Communism's sympathy for the oppressed, he otherwise opposes it flatly. All the more so, since a new class of the oppressed has been created. He calls upon the church to take part in the struggle: not to take sides—the past stand of the church was inexcusable—but to supply what Communism so lamentably and importantly lacks, namely, a spiritual element. Especially this, since Russian Communism, despite its protestations, is itself essentially bourgeois in spirit, being preoccupied with ways and means of increasing the supply of material goods.

To Berdyaev, who centrally holds that "man without God is not man," atheistic Communism is but the end of the road mapped and plotted by the Renaissance with its adherence to nominalism and concern for differential individualism. The men of the Renaissance borrowed flame from the mediaeval hearth, but no spark is left for Communists. The end of our time is at hand. We are now witnessing the dissolution of the democratic mythology: tolerance, equality, pacifism, popular sovereignty, democracy, individualism—banes, every one of them. Out of the ashes of the old order shall spring, is springing, a New Middle Ages, a great age of faith characterized by enjoyment of "holy realities"—and a doctrine of original sin. Such is the gist of Berdyaev's ably presented thesis, most convincing to those who do not see that Communism is not lifeless.

L. M. PAPE.

*University of Chicago.*

#### BRIEFER NOTICES

##### AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

In his *The First Chapter of the New Deal* (John A. Prescott and Son, pp. xvi, 510), Dr. John A. Lapp has performed a useful service by gathering together the materials dealing with the Recovery Program as enacted at the special session of 1933. The book is divided into three parts: Part I, a review of the setting of each of the new laws and of the problem which it was intended to solve; Part II, the texts of the acts, accompanied in each case by a brief digest; Part III, the presidential radio talks and addresses by prominent supporters of the President on special features of the program. The book went to press on August 1 and therefore does not contain

the many administrative decrees, orders, and rulings, nor the important steps in administrative enforcement taken since that time. It is directed to a full, complete setting forth of the legislative program only. In this it is entirely successful. In Part I, the reader is given an impartial and well-rounded sketch of the circumstances under which each act was considered necessary. Attention is called to some controversial points and to the patriotic way in which all factions buried their differences in order to secure immediate action. The author frankly points out that it is much too early to evaluate any of the laws, but that certain outstanding facts are clear in all of them: they represent a definite departure from *laissez faire* and the introduction of a general policy of social control; they confer upon the executive a hitherto undreamed of amount of power; they are nearly all based upon the belief that government can control economic and social trends; and even those acts which are expressly stated to be emergency measures are probably permanent in their main outlines, though not in their details. The most interesting and valuable feature of the book is that section of the chapter on "Looking Backward" in which the author outlines briefly those features of the program which are new and points out that even these represent only a further advance upon precedents already set. The tone of the comments throughout is entirely sympathetic, uncritical, and even unquestioning. The book will be found extremely valuable for quick reference to essential features of the Recovery Program, and would be even more valuable if it had an index.—JAMES T. YOUNG.

*The United States Shipping Board* (The Brookings Institution, pp. xi, 338, by Darrell H. Smith and Paul V. Betters, is the sixty-third volume in the series of Service Monographs of the United States Government prepared by staff members of the Institute for Government Research of the Brookings Institution. In mode of treatment, it is similar to other volumes in the series. An exceedingly interesting and informative chapter on the development of governmental policy from 1916 to 1930 with respect to the merchant marine is followed by chapters describing briefly but clearly the activities and organization of the Shipping Board and its subsidiary, the Merchant Fleet Corporation. Statistical tables, which include data on ship sales and construction loans, and copies of the by-laws of the Corporation and the operating agreement in use in 1930 are found in the appendices, together with the customary outline of organization, classification of activities, list of publications, index and compilation of laws, financial statements, and bibliography. Plunged headlong into a war emergency program soon after its establishment, the Shipping Board of necessity gave first consideration to the acquisition and operation of merchant vessels, and the continued management of this fleet directly or through operating agreements occupied much of its attention in the immediate

post-war years. More recently, however, and particularly with the passage of the Merchant Marine Act of 1928, greater emphasis has been placed upon the primary tasks for which it was created, namely, the regulation and promotion of privately-owned merchant shipping. Though the transfer of the functions of the Shipping Board and the Merchant Fleet Corporation to the Department of Commerce by executive order in 1933 renders obsolete certain sections of the book, it does not destroy the usefulness of the author's work for those who seek dependable information concerning governmental policies relative to the merchant marine and their administration during the war and post-war periods.—LLOYD M. SHORT.

Among the many by-products of the depression period, not the least important has been the concentration of attention in the United States on the subject of international trade. In *America Self-Contained* (Doubleday, Doran and Co., pp. 340), Samuel Crowther attempts to formulate, for the United States, an economic policy in which foreign trade would play no part. In vigorous popular language, he lays down the proposition that, not only in the political, but also in the economic field, the United States must isolate itself from the rest of the world if it is to retain its birthright and regain its lost prosperity. The United States, the author holds, can easily be made completely self-sufficient with the possible exception of tea and coffee and a few other non-essential goods. In order to protect the American standard of living and to provide adequately for the requirements of our own national defense, Mr. Crowther holds, we must bar cheap goods from abroad and build up new essential industries (such as the chemical industry) behind a high tariff wall. There will probably be little or no disagreement with the author's contention that we, in the United States, have not given much thought to the implications of our recently altered economic position in the international field. That we need to examine objectively where we now stand and determine, with equal objectivity, our future program goes without saying. While Mr. Crowther's case for economic isolation is very persuasively and simply put, in a form that will appeal to the general reader, this has been done at the expense of over-simplifying a very complicated problem and by presenting only one side of the case. For example, a great deal is made of the stock argument that a reduction in our tariff will bring about a serious dislocation in American industry, whereas the dislocation in our economic life which would be brought about by the permanent elimination of foreign trade is passed over summarily. The national defense argument in support of economic self-sufficiency obviously falls outside the strictly economic field. Yet it is made, at times, to serve as a bulwark for the author's arguments in that field. Moreover, if freer international

trade will mean greater national prosperity, as a legion of economists maintain, the nation's defense forces can be provided for more adequately than under an economic policy which results in less prosperity. Mr. Crowther has rendered a service in giving us a vigorous presentation of the case for national self-sufficiency. The subject of foreign trade, however, is a tough one. A great deal on the other side of the case is left unsaid, and is equally important for the unbiased mind if it is to reach a sound and balanced judgment on what should be the nature of our future international economic relations.—FREDERICK A. MIDDLEBUSH.

A year ago, a book by William P. Helm entitled *Washington Swindle Sheet* received notice in these pages. Now comes *Racketeering in Washington* (L. C. Page and Company, pp. viii, 321), by Raymond Clapper, a newspaper correspondent, who writes with no less vividness of the gentle art of grafting, "in small and great things," as practiced by even our most respected senators, representatives, and executives at the national capital. "Congress," says Mr. Clapper, "to win back the confidence of the nation, must demonstrate its worth." This it might conceivably do by a sustained exhibition of courage, intelligence, and disinterested statesmanship. But a good deal of ground could be regained merely by giving up "hilarious junketing" at the tax-payers' expense, padding clerk hire for the benefit of relatives and absentee retainers, and accepting mileage allowances for trips not actually taken. "Racketeering" may be a strong term for some of the practices upon which Mr. Clapper bestows his good-humored but pointed criticism. By all rational standards, however, they are at least wasteful and indefensible customs. Giving them up would not balance the budget; but it would create a rather favorable impression—at least among those of the citizenry who know all too well where some of their tax dollars actually go.

Marred by the traditional faults of a doctoral dissertation, Walter H. Mohr's *Federal Indian Relations* (University of Pennsylvania Press, pp. xi, 247) rehearses the story of Indian affairs between 1763 and 1788. The study must be considered as merely preliminary to a satisfactory treatment. It appears that Mr. Mohr has only scratched the surface of a most important body of material relating to his subject—the Draper manuscripts in the library of the Wisconsin Historical Society. Although Mr. Mohr's narrative includes some useful information, it is unfortunate that he has been satisfied merely to present a string of details and that he has not attempted a coherent analysis and appraisal of the issues, problems, personalities, and policies connected with the subject. After all, the work of the historian does not end with taking and classifying notes. An exposition of the meaning, integration, and influence of facts is not amiss.—CURTIS NETTELS.

Students of contemporary American government, as well as business executives, editors, trade association officials, and others, will find of great convenience *A Handbook of NRA: Laws, Regulations, and Codes* (Federal Codes, Inc., pp. 412), compiled under the direction of Lewis Mayers, member of the New York bar and professor at the College of the City of New York. The volume itself contains authenticated texts of all statutes, presidential messages, and formal statements relating to the NRA to the time of publication in September, 1933, and is supplemented by the *NRA Reporter*, issued bi-weekly by the same publishers and incorporating all of the significant new official materials as they appear. A limited amount of editorial explanation is supplied, but the sole object of the publication is to make available the texts in unabridged, accurate, and usable form; and in this it succeeds admirably. The official texts of judicial decisions, as they appear, will be included.

#### FOREIGN AND COMPARATIVE GOVERNMENT

Robert A. Brady's *The Rationalization Movement in German Industry* (University of California Press, pp. xxi, 466) is both an encyclopedia of post-war developments in German industry and life, and a thesis. The author is evidently in sympathy with the philosophic goals of the rationalization movement, whose roots he finds extending back through several decades of pre-war development, but which did not emerge into full consciousness as the dominant motive in German national life until the period 1924-29. But the actual workings of rationalization brought more of disappointment than of success. Often of marked value within limited fields, rationalization was unable to surmount the clash of special interests within Germany, plus unfavorable conditions imposed from without. The author holds that the movement, through its sins of commission and omission, must bear a considerable share of responsibility for the collapse of German economic life which began in 1929. Following a brief introductory sketch, Part I analyzes the elements of rationalization: science in industry, standardization, scientific management, the concept of economic planning. This part is noteworthy for its philosophic breadth and thoroughness; though in places the reader is perhaps not kept sufficiently aware that the author is telling of the growth of certain ideas in the German mind, rather than making an analysis of his own. The author returns to a more factual presentation in Part II, where he sketches the course of the rationalization movement in selected German industries. Part III discusses the meaning and practical consequences of German rationalization in terms of economic stability, politics, labor attitudes, and various phases of culture. Many of the objectives sought by the Germans under the name of rationalization would seem to be akin to present aims in America; but attendant conditions are widely dissimilar. Hence the happy

combination of factual presentation and analysis contained in Professor Brady's work should be most helpful to all who in this hour of our own experimentation wish to examine the German record in search of ideas, or comfort, or warning.—HORACE B. DRURY.

The student of the current internal politics of France will be glad to know of the appearance of *French Royalist Doctrines since the Revolution* (Columbia University Press, pp. x, 326), by Charlotte Touzalin Muret. As its preface insists, the book is not a history of royalist parties in modern France. At the same time, it sets out most of what is important about the Action Française, the existing royalist party, the influence of which is well known to be much greater than the relatively small size of its membership might suggest. There is an extended account not only of the doctrines of the more important members of this organization, but of the doctrines of their precursors as well. Since no satisfactory understanding even of a matter like the basic distinction between Right and Left in France is possible without some knowledge of the existing position of royalist doctrine and its history, no further justification perhaps is needed for this book. However, its preface suggests that the prevalent anti-democratic movement adds value to a study of views which have been consistently anti-democratic. After a short introduction, an initial chapter is devoted to the doctrines of the theocrats, more especially to those of de Bonald and de Maistre. Chateaubriand's views are set out as typical of "romantic" royalism; Royer-Collard is discussed as a "doctrinaire." Three chapters are allotted to "liberal" monarchist views, special attention being given to Benjamin Constant and Guizot. Next in order are treated the "parliamentary legitimists" and the "authoritarian legitimists." A chapter is devoted to the views of the Comte de Chambord and the Comte de Paris, and another to the Ralliement. A chapter on La Tour du Pin is followed by three final chapters on the Action Française.—R. K. GOOCH.

The Institute of Pacific Relations, Victorian Branch, has issued a second volume of studies entitled *The Peopling of Australia* (Melbourne University Press, pp. 327). This is the work of fourteen Australian scholars, and forms part of a comprehensive program of research being carried on from local viewpoints in the countries bordering the Pacific. Australia is commonly regarded as one of the few relatively empty spaces of the earth; hence Japan has been suspected of casting covetous eyes in that direction, and there have been systematic efforts in Britain of recent years to utilize the southern Dominion as a principal outlet for her surplus population. The present survey is an effort to appraise scientifically the various factors which will determine the ability of Australia to absorb further immigration on any considerable scale. Following an excellent

introductory analysis of the problem by Professor P. D. Phillips, the first section of the volume deals with the historical background and the psychological factors involved. Then follows an examination of the economic factors. Here two antithetic points of view, with divergent conclusions, are noted among the contributors. The one regards the problem primarily from the international viewpoint, as depending upon the ability to find markets for an increased exportable surplus, and is therefore pessimistic as to the prospect. The other sees less dependence upon external trade and comparative costs, and envisages a more hopeful future on the basis of internal exploitation and diversified production. The third section is devoted to consideration of the political factors operative, and to the actual working of settlement projects in Victoria and Western Australia. The relative failure of the latter is attributed to lack of discrimination and of competent technical advice. While government aid is admittedly essential to such projects, it must not be so applied as to undermine the settlers' initiative or to subsidize the inherently unfit.—A. GORDON DEWEY.

Students of world politics who want to know how England secured her foothold in India, the methods employed to extend her domination, and the policies used to maintain her grip over that Asian sub-continent will find it worth while to peruse Professor Gurmukh Nihal Singh's *Land-Marks in Indian Constitutional and National Development, 1600-1919* (The Indian Bookshop, pp. xxx, 711). The work is divided broadly into two sections. The first part deals with the rule of the East India Company, and the second with India under the British crown from 1861 to 1919. The author traces the slow development of representative institutions and the rapid growth of the nationalist movement. Exploiting imperialism, with its veneer of self-righteousness, is set against the background of the rising tide of nationalism. Mr. Singh gives a clear insight into the existing system of English government in India, but carefully avoids "apportioning praise or blame." He plays safe. Nevertheless his facts, supported by numerous and authoritative citations, speak loudly enough for those who have ears to hear. The volume is particularly timely, and, best of all, it is written in a judicial temper from the standpoint of a constitutional historian. Though free from emotional or sentimental encumbrances, the book could be improved by condensation.—SUDHINDRA BOSE.

#### INTERNATIONAL LAW AND RELATIONS

Mr. F. R. Eldridge has written *Dangerous Thoughts on the Orient* (D. Appleton-Century Co., pp. ix, 232) to support a thesis. Put briefly, this is that "Japan, the only world power in the Far East, wants order, safety, and progress for the Orient" (p. 9), and that she should be supported, not condemned, for breaking through the sentimental control of policy im-

posed in such unrealistic agreements as the Nine-Power Treaty, the Kellogg Pact, and the League Covenant. Realism requires a recognition of the impossibility of establishing peace except by methods of military dominance. The Japanese are justified in determining the course of events in the Far East in their own interest, since to do so is essential to their economic preservation, and any one who questions that right and believes that other states, with their own conceptions of interest different from that of Japan, should have endeavored to restrain Japan is guilty of harboring "dangerous thoughts." In support of this thesis, Part I of the book is devoted to a consideration of the historical relations of Japan with the World, America, China, Manchuria, and Russia. Part II presents Japan's heritage in the fields of art, literature, the drama and poetry, philosophy and thought, commerce and industry, and labor and capital developments. Part III presents China's environment through successive chapters on China and the World, America, Manchuria, and Russia. The final chapter presents specifically the "dangerous thoughts," returning to the theme of the introduction. The book offers nothing new to the student. For the general reader, the book itself is dangerous because superficial, contradictory in analysis, and filled with historical inaccuracies. Thus the last use of the sword at home is stated to have been during the Restoration (p. 17), and yet the samurai rebellion (1878) involved its use (p. 31); the South Manchurian Railway concession is discussed as one for twenty-five instead of eighty years (p. 43); the Lansing-Ishii Agreement, though dating from 1917, "had been Japan's price for entering the war against Germany" (p. 47); H. G. W. Woodhead becomes H. W. Woodward (p. 197). There is truth in the book, but much of it is presented in such a way as to leave false impressions.—HAROLD M. VINACKE.

The third issue of *The International Labor Office Year-Book* (Geneva, pp. 459) contains a wealth of information which should make it a valuable reference book for scholars interested in labor or social legislation. A brief general introduction summarizes the activities of the I.L.O. for the year and its relations with other organizations. Chapter I, well fortified with statistical tables, reviews the present economic situation (prices, finance, production, trade, income, etc.), and the following two chapters, dealing with conditions of work and social insurance, contain a detailed and well organized account of recent developments in national regulation of conditions of labor. After perusing some of the articles noted, the reader may be surprised to learn that "the necessity of protecting the workers against occupational and social risks is no longer seriously contested" (p. 225). The report recognizes that social insurance has been hard hit by depression and unemployment, but sees no falling off in the activity of institutions already set up. Shorter chapters are devoted to wages, unemploy-

ment, placing and migration, workers' rights, and special problems. Statistical tables fill fifty pages of appendices; and the value of the report is further increased by a good index.—JOHN D. LEWIS.

Who may be the parties to relations of international law? What is the nature of the concept of personality, capacity for rights and duties in the world community? Such is the inquiry raised in Giambattista Mazzoleni's abstruse essay in the field of jurisprudence, *Personalita giuridica e soggetti del diritto internazionale* (Libreria Treves, pp. 110). The volume comes from the University of Pavia, and is based mainly on the works of Diena, Fedozzi, Cavagliari, Jarrige, Gemma, and Anzilotti. In the author's view, sovereignty is irrelevant, and the word should be banned. Juridical capacity, in varying degrees as qualified by the legal facts in the individual case, is the essential point. International personality "ought to be ascribed to every entity which has an organization of its own, and professes purposes for which it has adequate means and maintains relations with other subjects of international law." This includes the Holy See, which may be regarded as a personal union of two diverse entities, the City of the Vatican (political) and the Catholic Church (religious), both enjoying capacities for rights and duties in international relations. The concept of "subject" includes also such various entities as vassal states, ethnic minorities, colonial corporations, recognized insurgent communities, the Reparations Commission, and the Bank of International Settlements, and even individuals so far as they have standing before international tribunals, actively in appeals to an international prize court, passively as breakers of international law on piracy, slave trade, or interference with treaty-protected cables.—H. R. SPENCER.

In *La Notion du "Politique" et la Théorie des Différends internationaux* (Recueil Sirey, pp. 92), Hans Morgenthau outlines the problem of the classification of international differences, criticizes the commonly accepted views, and attempts, avowedly from a purely theoretical rather than a practical point of view, to arrive at a scientifically unassailable classification. As such, his task differs from, and in his judgment is necessarily preliminary to, studies such as those of Lauterpacht, which consider the classification of international differences above all from the practical angle of their justiciability. The author, although holding that an international judicial tribunal is competent to render a material decision on any question submitted to it, whatever the nature and content of the question, claims that political differences which are essentially tension questions involving national power and prestige may not be subjectively justiciable—the parties will be prevented by a psychological repugnance from submitting them to the decision of organs of international jurisdiction. In certain cases, however, as, for example, the Austro-German cus-

toms union controversy, a question can be divested of its political character in the sense that for purposes of judgment it can be separated by the court from its connection with a situation of tension. The author expects to develop the practical consequences of his conclusions in a later work.—FRANK M. RUSSELL.

*Public Opinion and World Politics* (University of Chicago Press, pp. xiii, 237), edited by Quincy Wright, contains lectures on the Harris Foundation delivered at the University of Chicago in 1933 by John W. Dafoe, managing editor of the *Winnipeg Free Press*; Jules Sauerwein, foreign editor of *Paris-Soir*; Edgar Stern-Rubarth, of Wolff's Telegraphic Bureau; Professor Ralph H. Lutz of Stanford University; and Professor Harold D. Lasswell of the University of Chicago. The lectures are devoted to public opinion and to propaganda, the former obtaining little more than oratorical treatment. By contrast, several phases of the technique of propaganda are studied with some care. Particularly thought-provoking is the final essay, by Professor Lasswell, on "The Strategy of Revolutionary and War Propaganda," although in places the article requires translation from the jargon one has come to associate with the Chicago school. At least two-thirds of the volume is composed of random commonplaces which might well have been left unprinted. Surely the *procès-verbaux* of the round-table meetings would be better worth preserving than the lectures here reproduced. If not, minutes and lectures might be carefully mimeographed and deposited in library stacks. The one or two lectures worth publication could be decently interred in scientific periodicals.—HERBERT W. BRIGGS.

Students of colonial government and administration and of world politics will find C. B. Fawcett's *A Political Geography of the British Empire* (Houghton Mifflin Co., pp. xiii, 409) an admirable manual of the political status, populations, resources, products, industries, trade relations, communications, and environmental features of all parts of the Empire. The author is a professor of economic and regional geography in the University of London and a thoroughly competent scholar. Particular interest attaches to his brief but pointed discussion of such matters as the outlook for the maintenance of a "White Australia," the possibility that in time Great Britain may be even more favorable to Indian independence than the peoples of India themselves, and difficulties obstructing the rise of an East African self-governing dominion. Numerous black-and-white maps add to the usefulness of the book.

*International Adjudications, Modern Series, Vol. VI* (Oxford University Press, pp. xxv, 418), edited by John Bassett Moore, is complementary in a special sense to Volumes I and II of the same series and deals with the

proceedings and the award of the mixed commission which, under Article 4 of the treaty of Ghent, determined title to certain islands in Passamaquoddy Bay and the Bay of Fundy. To a recital of the proceedings, Judge Moore has appended an abridgment of the arguments of the agents, to the extent of over 300 pages; but they have assuredly "not lost any of the force and meaning they were intended to convey." The arguments seem of greater lasting importance than the Award; indeed, the description of the process by which the latter was reached (pp. 29-34) suggests the reflection that, even in international questions, the "essence of judicial duty" for a commissioner is *to decide*.—LLEWELLYN PFANKUCHEN.

Supplement 2 to *Papers Relating to the Foreign Relations of the United States, 1918: The World War* (Government Printing Office, pp. lxxix, 862) covers in general the period from the entrance of the United States into the World War to the date of the Armistice, and is announced as the last of the series pertaining to the war period. Edited with the same thoroughness that has been praised in notes in this REVIEW dealing with earlier volumes, the papers in the present collection are grouped under eight general heads, i.e., prisoners of war, enemy aliens, enemy property, trading with the enemy, relief operations, military service conventions, legal status of members of American forces in Europe, and miscellaneous.

In *Far Eastern Front* (Harrison Smith and Robert Haas, pp. 336), Edgar Snow presents a readable running account of the Sino-Japanese "war" of 1931-33 as viewed by a youthful but competent American newspaper reporter. The book is one of the sort that can be skimmed for interesting observations and impressions, but contains nothing of more substantial worth for the serious student.

#### POLITICAL THEORY AND MISCELLANEOUS

In the preface to *The Public Career of William M. Evarts* (University of California Press, pp. 297), Brainerd Dyer comments on the lack of a thorough study of this eminent American statesman. Strangely enough, in setting for himself the task of supplying the needed biography, Mr. Dyer omits all mention of the sketch of Evarts by Claude G. Bowers and Helen Dwight Reid in *The American Secretaries of State* series. They, too, called attention to the fact that there was no good biography of Evarts, and by so doing, emphasized the importance of Mr. Dyer's book, which fills a significant gap in the list of biographies of American statesmen. Although Mr. Dyer has concerned himself primarily with Evarts' public career, he has included enough details of a personal or domestic nature to add materially to a proper appreciation of Evarts' public life. Born in Boston, Evarts was educated at the Boston Latin School and at Yale, where he

proved to be sufficiently mischievous in his senior year to draw upon himself a written reprimand from President Day. Mr. Dyer has described Evarts' public services, which included terms as attorney-general, secretary of state, and United States senator, with scholarly discrimination. He properly ranks Evarts as one of our greatest lawyers, pointing to his work as counsel for President Johnson in the impeachment trial, as counsel for the United States in the Alabama claims arbitration, and as counsel for the Republican party in the contested election between Hayes and Tilden. Evarts also ranked with the best of American orators. He was selected to deliver the oration at Philadelphia on the centennial of the Declaration of Independence. Mr. Dyer places Evarts below Seward, John Sherman, Blaine, and others of his contemporaries as a politician and statesman. He was not a sagacious politician, nor did he possess the popular appeal so necessary for success in politics. Mr. Dyer has summed up Evarts' character well in the following words: "Though a transplanted New Englander, Evarts never outlived his New England heritage. It emerges and persists in his instinct for public service and devotion to public duty, as well as in his unsullied integrity and the solidity of his character." A bibliography adds value to the book.—EVERETT S. BROWN.

The importance of Rupert B. Vance's *Human Geography of the South* (University of North Carolina Press, pp. xiv, 596) will be increasingly manifest. He has taken as his high aim a study of regional resources and human adequacy—"a synthetic treatment of the interaction of men and nature in the American South." The concept of the region, physical and cultural factors, economic and political forms, is given masterly expression in broad terms of population, soil, climate, culture, and heritage. Dr. Vance is not interested in the sterile doctrine of state's rights or the old fire-eating sectionalism. His book is a basic study of regionalism and regional planning which has for its purpose the reconstruction of a region. The economic basis of the rehabilitation of the region is given ample documentation, and agriculture and mineral and industrial resources are set out in attractive ways; but the major demand for social guidance in the region is the dominant theme of the book. The emphasis is upon the broad aspects of regional culture, and a culture which is not in conflict with a nationalism whose strength is based upon alert and intelligent regional differences. But plainly this human culture is more important than the system of profits and exploitation of region and peoples which has almost made impossible the necessary energy and vision that regional planning requires. Written in sympathy and brilliance, the study is the appropriate textbook for the Tennessee Valley Authority, and easily takes first place in the growing literature of regional and national social planning.—CHARLES W. PIPKIN.

The second volume of M. N. Pokrovsky's *Brief History of Russia*, translated by D. S. Mirsky (International Publishers, pp. 348) deals in much detail with the political and economic affairs of the tsarist empire from the rise of commercial capitalism in the later nineteenth century to and including the revolution of 1905. The author is a Communist, and the ambitious work upon which he is engaged may be regarded as a semi-official undertaking—one, at all events, which has the warm endorsement of not only Lenin in his day but the key personages at Moscow at the present time. Recognizing that many of his readers will have been witnesses of the major events dealt with in the present volume, M. Pokrovsky indicates a purpose to subordinate narrative to interpretation—"interpretation," he says, "of what is still for us the present," meaning that the beginning of the strike movement, the armed insurrections of the period of the war with Japan, the growth of the Bolshevik party, the creation and failure of the Duma, and the terrors of the Stolypin régime are but phases of the unified, continuous, and as yet far from completed Russian revolution. "We who are Marxists," he writes, "are more advantageously placed than our bourgeois predecessors: we possess what they do not possess, a *method*, a key to the interpretation of all developments, whether they took place yesterday or thousands of years ago." Fortified with such assurance, the author plunges into his subject, and, it must be conceded, writes a very readable and interesting book—one which no person desiring to comprehend Bolshevik ideology in its deeper recesses can afford to ignore.

—F. A. O.

The *China Year Book, 1933* (North-China Daily News and Herald, pp. xvi, 785), edited by H. G. W. Woodhead, is the fifteenth annual issue of this valuable work of reference. One can readily accept the editor's testimony that preparation of the volume proved exceptionally difficult because of the absorption of the government departments in the Sino-Japanese crisis; also that, notwithstanding that the established practice of printing original documents on controversial topics was adhered to, space could be found for less than half of the materials placed at his disposal in connection with the Sino-Japanese dispute. Even so, more than sixty double-column pages of documents and summaries on this latter subject are presented, including the inevitable digest of the Lytton Report. A very adequate record of the affairs of the Kuomintang party and of the Nationalist government occupies half a dozen chapters; and there is the customary statistical and descriptive matter, in great detail, on trade, finance, industry, communications, labor, education, currency, shipping, religion, justice, and public health. Treaty revision, extraterritoriality, and certain other topics customarily treated are, however, omitted on the ground that they had ceased to be "live issues" in the period

under review. Students of Far Eastern affairs continue to be deeply indebted to Mr. Woodhead for his enterprise in keeping this year-book going, and on a high plane, under circumstances of peculiar difficulty.  
—F.A.O.

*The Company of the Indies in the Days of Dupleix* (Chemical Publishing Co., pp. ix, 238), by Wilbert H. Dalglish, is a detailed study based principally upon the French archives. The book describes the Company's economic and administrative organization and activities in India and France from 1722 to 1754, and its chronic inability to become self-supporting. One principal cause of this was the inefficiency or dishonesty of many employees, which resulted partly from the system of inadequate salaries supplemented by private trade, and partly from nepotism. The Company was very largely controlled by the king, and this compelled it to conciliate his ministers and favorites by finding posts for their protégés, many of whom were either incompetent or fortune-hunters. The general conclusions tend to be overshadowed by the mass of interesting details given. The value of the monetary tables would have been increased by giving the modern values of the eighteenth-century French and Indian coins.—LENNOX A. MILLS.

"Big Dick" Butler, as he appears in *Dock Walloper; The Story of "Big Dick" Buller* (G. P. Putnam's Sons, pp. v, 276), by Richard J. Butler and Joseph Driscoll, improves upon acquaintance. At first—and at last too—he strikes one as being a garrulous Irishman interested in whiskey and fighting, and because of his environment (Hell's Kitchen) in strong-arm politics. The reader cannot hear his fog-horn voice, but he can see Big Dick sitting on the edge of a bed or desk, guzzling Lincoln Inn, and telling his encouraging audience—Mr. Joseph Driscoll of the *New York Herald-Tribune*—about his vigorous and exciting life. Whether he was at the moment working for his ticket, boss of the longshoremen, saloon-keeper, or man-about-town, he was always the fighter and fixer. "The most neglected public servant in American life today is the fixer" (p. 237). He speaks of bribery and ballot-box stuffing as another person might speak of the weather. He is always the dead game sport, and now at fifty-eight he is ready for the next big adventure. Mr. Driscoll has told Dick's story well, though vividness might have been gained if part of the narrative had been in Mr. Butler's own words.—J. T. SALTER.

*The Annals of the American Academy of Political and Social Science*, Vol. 170 (November, 1933, pp. 204), devoted to "Social Insurance," contains a series of papers on social insurance in general, unemployment insurance, old age pensions, and health insurance. Arguments for insurance and statements of present tendencies are particularly well presented by

I. M. Rubinow, Abraham Epstein, and John B. Andrews. There is, however, no real criticism to balance the optimism of the advocates in an article by a private insurance broker who sees all forms of social insurance as insidious socialist plots, "infections" from "decadent countries, of Europe," which attempt to repeal God's natural law and speed us on the way to Moscow. Nor is the reader enlightened by another paper citing the usual popular arguments *contra*, and bolstered by copious quotations from leading churchmen.—JOHN D. LEWIS.

In *Our Earliest Colonial Settlements* (New York University Press, pp. vii, 179), Professor Charles M. Andrews presents a compact survey which embodies, in an attractive, vigorous literary style, all important research on its subject. The six studies of the volume compose an original synthesis of the many intricate factors of early colonization, with emphasis upon political and religious influences. Sir Walter Raleigh as the pioneer promoter of English colonies, the part of the Virginia Company in the early history of Virginia, the spirit of independence in Massachusetts, individualism in Rhode Island, the social stability of Connecticut, and the workings of the proprietary form of colonization in Maryland are the themes of the essays. Professor Andrews' learning and breadth of view enable him to speak with assurance on a wide range of subjects, and in their largest aspects. The essays are among the ripest fruits of American historical scholarship.—CURTIS NETTELS.

*Canadian Papers, 1933* (Canadian Institute of International Affairs, pp. 99) is a series of papers prepared for the use of the round tables at the conference of the Institute of Pacific Relations at Banff, Canada, August 14–28, 1933. A paper on the Imperial Economic Conference, by K. W. Taylor, and a statistical outline of Canadian foreign trade, by J. M. MacDonald, relate particularly to Pacific affairs. Papers on Canadian governmental policy on tariffs and wheat control, by W. A. Mackintosh and Steven Cartwright, respectively, are of more general application and interest. Together, these papers discuss various aspects of Canadian economic life in a manner that will please the non-expert and general reader as much as the experts for whose use they were specially prepared.—JOSEPH R. STARR.

Professor Carl Wittke's *History of Canada* (F. S. Crofts and Co., pp. 443) is a second and revised edition of a book which, since its initial publication in 1928, has been of considerable value for political scientists by reason of its emphasis on the Dominion's rôle in the development of British imperial policies. A new chapter presents a good picture of Canadian politics in the past five or six years.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CHARLES S. HYNEMAN

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### AMERICAN GOVERNMENT AND PUBLIC LAW

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## SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, Montevideo, Uruguay, December 3, 1933.

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Commercial arbitration in the American republics. 67 p.

A comparative study of the laws and regulations governing aerial navigation in the countries, members of the Pan American Union. 40 p.

Projects on certain topics of the program, submitted by the executive committee of the American institute of international law. . . . 54 p.

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## POLITICAL ASPECTS OF THE NEW DEAL\*

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Forty years ago, an intelligent Englishman in a private letter described his impressions of the then state of American politics. "When educated men get to talking politics," he wrote, "they have a sort of bitter despair in their minds which is not pleasant to listen to. I dare say the solution is one which was told me the other day. There is nothing in politics now."<sup>1</sup> "In a happy country like this, politics don't affect great questions or the happiness of the nation."<sup>2</sup> "Politics is all dullness relieved by rascality."<sup>3</sup>

For the greater part of the sixty years since the Civil War, Sir Cecil Spring-Rice's description of American politics has held substantially true, though of course more true at some times than others. The twelve-year period through which we have just passed was one of the intervals of which it was distinctly rather *more* than less true. Since then there has been a change. It is no longer true that politics do not affect great questions or the happiness of the nation. It is no longer true that politics is all dullness. From the standpoint of the student and observer of political developments, perhaps the most significant aspect of the new period into which we have entered has been the quickening of the political consciousness of the American people, the awakening of a renewed interest in politics and political activity as an instrument for the solution of problems connected with the general welfare. We have advanced

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<sup>1</sup> Cecil Spring-Rice to his brother Stephen, Jan. 24, 1890. *The Letters and Friendships of Sir Cecil Spring-Rice* (Boston, 1929), vol. 1, p. 102.

<sup>2</sup> Cecil Spring-Rice to Ronald Munro Ferguson, March 28, 1890. *Ibid.*, vol. 1, p. 104.

<sup>3</sup> Letter cited in note 1.

a long way in the short interval since an occupant of high office could say, with general approval, that the main object of government was to mind its own business and let the citizens mind theirs.

There has come at last, with the surge and pressure of a current too long dammed up, a nation-wide demand that the national government shall do something about national problems. It is this demand, impinging from all directions on Washington, that has carried the Administration forward to measures which, to those accustomed to the *laissez-faire* administrations of the past, seem like a revolutionary extension of governmental activity. That extension has come because it has been demanded, and the demand is indicated by the willingness and docility with which the new legislation has been accepted. In spite of conservative critics, our people have not fallen so low as tamely to submit to what they themselves regard as an invasion of their rights. They are submitting in an overwhelming majority to the regulatory features of the President's recovery program because it is the result of their own demands.

I do not now refer to demands for special favors such as have too frequently moved even the *laissez-faire* administrations of the past. Such demands, while still obtrusive, have largely receded. What has been demanded at Washington since the beginning of this administration by spokesmen of all interests—industry, agriculture, and labor alike—has been a national program to bring into balance, in one way or another, the national economy as a whole. Each interest has, of course, dominantly emphasized its own claims, but the emphasis has at least been upon the claims of nation-wide interests and not of mere private groups, and it has been tempered with a willingness to conciliate and compromise with the claims of coördinate interests in the national economy. Without the broader point of view which has expressed itself in such a spirit of conciliation, the recovery program could not even have been launched.

I

I suggest, therefore, that the first significant political aspect of the New Deal is one which should specially interest political scientists who are studying public opinion. There are at least three main problems for their consideration. The first relates to the changed state of opinion among the important organized interests of the country who are subjected, in one form or another, to burdens by

the recovery legislation, but who instead of standing by their past opposition to governmental regulation, have welcomed it with an amazingly full measure of coöperation. No doubt this change is but another illustration that opinions result in large measure from factual pressures. For a number of years the more thoughtful industrialists have been on the way to perceiving the essential inconsistency between our mechanized system of mass production and distribution on the one hand and unregulated competitive individualism on the other. Faced with this problem, the urge toward some amalgam of industrial coöperation with governmental regulation seems inevitable. This view was growing during the boom years under the surface doctrine of rugged individualism, and when the latter collapsed, there has been left for the moment among the business community a fluid state of mind, which is receptive to experiments in coöperation and control. On the whole, these are most strongly resisted by the smaller business men, who are less likely to visualize the problems of their industry as a whole, and who, as individuals, may hope, through unregulated competition, to increase their own importance. For the time being, however, the financial distress of this class is so acute that they have been willing, as they might not otherwise have been, to go along with any program which seemed to promise a measure of general recovery. The depression has made them aware, for the moment, of the connection between their own prosperity and the prosperity of the nation as a whole.

There has been a no less important development in the public opinion of the mass of the people who are outside the scope of organized interest-groups. Here, too, there has been a marked overhauling of mental furniture and an abandonment of stereotypes which had proved themselves unequal to saving the country from the depression. The popular acquiescence in governmental *laissez-faire* which was so marked a few years ago was, I believe, due primarily to the fact that the people were looking elsewhere than to government for their leadership, and not to the fact that they wished to be leaderless. The instinct for leadership was strong, but our people had enthroned business, rather than government, in a position of preëminence, and necessarily business leadership belittled the significance and value of governmental action. As a result of the depression, business toppled from its pedestal as the national idol and the popular mind reverted once more, as in the

pre-business era, to the national government as the national leader. A strong feeling developed that something must be done to restore the economic life of the nation which business itself was unable to restore, and that government alone was in a position to undertake such a task. For the spread of this view, the personality of the President, with its remarkable appeal to the confidence of the average man, has been very largely responsible.

A third significant aspect of public opinion at the present time is the unusual unanimity which seems to characterize it on essentials. With the exception on the one hand of a more or less negligible group which sincerely repeats the dead liturgy of past dogmas, and an equally small group at the other extreme which sincerely advocates a dogmatic communism, practically all of our people seem agreed that now is not the time to divide over abstract systems, either of individualism or socialism or fascism, but that to meet the emergency, there is needed a degree of governmental regulation of private conduct and a degree of governmental subvention to industry which must be regarded as pragmatic expedients rather than as endorsements of any systematic theory. Since the hottest divisions of opinion always come about the rallying points of theories, the absence of such rallying points makes for unanimity. Differences are differences on questions of administrative detail, and these arouse no great heat. There is general recognition that such issues cannot properly be worked out by public opinion, but must be left to a series of decisions, wise or unwise, by the administrative authority. If enough unwise decisions should be made, the result in time would no doubt be a cumulative mass of popular resentment. That time, however, remains in the future, and meanwhile there is practically unanimous willingness to let the Administration have a fair chance to show its skill in carrying into effect a policy with the outlines of which practically everyone for the moment agrees.

I have referred to these various aspects of prevailing public opinion because they form, I believe, the essential background for any understanding of the political significance of the recovery program. From the standpoint of the student of government, there are, it seems to me, three major fields in which the recovery program raises questions of outstanding importance. The first is the policy of broad delegation of power by the legislature to the executive. The second is the extension of national power to cover

types of regulation broader than those which have hitherto been exercised by the federal government through the interstate commerce power or otherwise. The third is the extension of the regulatory activity of government into fields hitherto left without regulation. I shall deal with each of these in turn.

## II

The more important recovery statutes follow the plan of stating in the statute a broad outline of policy and of committing to the President, or to some other administrative agency, sweeping authority to give effect to the declared policy by making detailed rules and regulations or choices between alternative legislative devices. The two most important of the recovery statutes, namely, the Agricultural Adjustment Act and the Industrial Recovery Act, are both drafted in this form. Without elaboration of details, these are the most extreme and striking illustrations of the degree to which administrative authority has been expanded in connection with the recovery program. Concerning ourselves here with political and governmental, rather than constitutional considerations, the pertinent question is, What justification, if any, exists for such broad delegations of power? The answer will, I think, lead us back somewhat far into a consideration of the processes of government. We are in a field where the facts, and the exigencies imposed by the facts, seem to have outrun for the moment the theories available for dealing with them.

Viewing government as a practical process consisting of a sequence of specific acts, substantially all governmental acts which precede the stage of enforcement can, I submit, be reduced to three types, namely, formulation, consultation, and decision. A proposed governmental mandate must first be formulated somewhere. Then practically always it must be submitted to some form of consultation with a group of advisers. Finally, a decision as to whether it is to be adopted or not must be reached by some agency, either, for example, by the body of advisers in the form of a vote, or by the formulating agency itself as a result of the impression made upon it by the advisers. This process must go on in connection with every governmental mandate from a constitution or a statute at one extreme of the scale of importance to a minor administrative order at the other. In the case of an ordinary statute in normal times, the formulating agency is an individual senator or congress-

man. The consulting agency is in the first instance a committee, and in the second Congress itself, and in both instances, the consulting agency has also the power of decision, since a proposal does not get before Congress ordinarily until the committee has approved it, and if Congress does not approve it, it does not become a governmental mandate. Under our form of government, it is only for extraordinary measures, or in extraordinary times, that the Administration assumes legislative leadership, or, in other words, becomes the formulating agency for proposals to be considered and decided by Congress. The recovery statutes fall within this extraordinary class of legislation for which the Administration has assumed leadership. In their formulation, it has been confronted with the problem of how much detail it should submit for consultation and decision by Congress, and how wide a field it should seek permission to reserve for its own decision after consultation with other agencies. In other words, should each specifically detailed regulatory mandate be submitted for congressional consultation and emerge as a detail of the statute, or should the approval of Congress be asked only for a grant of authority to the executive to make the detailed regulations itself? What justification is there, if any, for the fact that the second of these alternatives was chosen rather than the first?

The major consideration, I submit, for withdrawing the detailed regulatory mandates under the new statutes from the statutes themselves, and hence from consultation and decision by Congress, is simply the factor of the limitation of time and human effort. Under the Industrial Recovery Act alone, it has taken a force of more than 1,200 persons almost six months to work out about 150 codes for as many different industries; and the task of industrial codification is not yet completed. Obviously, Congress itself could perform no such task, nor has it the facilities to set up under its own control any mechanism for performing such a task. I suppose the argument might be advanced that the reason for the tremendous amount of work involved in the industrial codes has been that they have been on a voluntary basis, and that as a consequence there has had to be an enormous amount of consultation with the industries themselves. This is true, yet even if the voluntary feature had been absent, can it be supposed that regulations of this character, involving the detailed processes of an industry, could be satisfactorily worked out without the same type of consultation with the industry itself?

In this fact of the desirability of consulting with an industry itself before finally deciding upon the detailed governmental mandates to be applied to that industry, we come upon the second important reason for not including the regulatory mandates in the statute, but reserving them instead for executive determination. In other words, government is entering upon a field where a new and different type of consultation from that which has ordinarily been applied in the past is increasingly important. In the past, the consultation which has preceded the promulgation of a governmental mandate has normally been confined to consultation with or between a group of general political advisers, such as the ordinary type of legislative body. To be sure, there has often been informal consultation, through hearings or otherwise, with some of the persons to be affected by the proposed mandate. But such consultation has formed no regular part of normal legislative procedure. There has, however, been growing up in recent years on the part of many of the administrative departments a regular practice of consulting with the affected groups before finally deciding upon a departmental regulation. It is this practice that has been brought into the foreground and emphasized by the procedure under the recovery legislation. From a governmental standpoint, no more significant change is embodied in the new legislation than the emphasis which it places upon consultation by the government with the affected economic groups on matters of substantive detail, in addition to political consultation with the legislature on matters of broad policy. It is primarily to leave room for this type of consultation, which can satisfactorily be carried out simultaneously on an extended front only by an executive agency, that the statute must content itself with eschewing details and confining itself to enunciating policy.

The question has been asked, and it is, I believe, significant that it has not been asked more frequently or more loudly, whether this process does not mark a stage in the supposed decadence of representative government, and whether it does not represent an American phase of the Fascist tendencies now prevalent in Continental Europe. For the benefit of those who prefer to think in terms of broad blocks of ideas, I suppose the answer would be that everything depends on what we mean by representative government and what we expect of it. If by representative government we mean that the representative body must itself lay down all of the details which the executive is to carry out, then by definition and

hypothesis we have driven ourselves to say that the new development amounts to a curtailment of representative government. But is there any sound reason for adopting such a mechanical definition? For my own part, I would prefer a definition which would preserve to the representative body a power, on the one hand, to lay down for the executive the lines of policy which it is to follow, and, on the other hand, would preserve to it a supreme power of intervening at any point and correcting or undoing executive mandates which it regards as inconsistent with the policy so laid down. Both these powers remain to Congress in full in connection with the recovery program. It is sometimes suggested that in some way there has been a derogation from the powers of Congress because it has not been required that administrative regulations should be submitted to the legislative body before taking effect. Such a requirement would be superfluous. Congress can at any time intervene, and by specific statutory provision alter the regulatory provisions which the Administration, under its broad statutory authority, has put into effect for any particular industry, or any particular type of situation. While Congress retains this supreme corrective power, and while it remains as responsive as ever to the electorate at two-year intervals, it is, I submit, an academic diversion to speculate whether we are on the way to Fascism in the United States.

### III

The second major development of interest to students of government in connection with the recovery program is the extension of national power under the new legislation to include types of regulation broader than those hitherto exercised by the federal government on any considerable scale.

The question of the proper distribution of functions between central and local government agencies is one of the most intensely practical in the whole field of politics. It is unfortunate that because of special circumstances in our constitutional history, it is too frequently discussed as if it were a problem of abstract logic or the verbal application of precedents. Almost all discussion of the boundary between state and federal functions goes on in terms of the interstate commerce power and the reserved rights of the states as interpreted in Supreme Court decisions. Actually, a much broader body of considerations must be resorted to if we are not to make needless sacrifices to abstract dialectic.

Assuming the desirability of governmental regulation of economic activity, the question of whether any particular regulation is to be carried on through the central or a local governmental agency is essentially one of effectiveness. If a regulation is entrusted to an agency which cannot effectively perform it, the regulation is futile. Whether or not any given regulation can be effectively performed by the central or local government is a question of fact depending on the nature and object of the regulation, and on the way in which the economic activity to be regulated happens to be carried on.

As a result of a century and a half of nation-wide internal free trade within the United States, coupled with the rise of machine industry and mass production and distribution, local and interstate economic activity have come in many respects to be but correlative elements of a single industrial system. With a nation-wide market open to any producer, industries have been localized in particular sections of the country, so that what from the standpoint of a particular state may be local industries, are from a national standpoint the source of supply for the whole nation. The products of every state compete freely in the markets of every other.

The consequence is that substantially nothing can be done to improve the economic condition of the country by civilizing competition, spreading employment, regulating the marketing relations between producers, distributors, and consumers, or nationalizing production, unless it is done through a unitary program on a nation-wide scale. From the standpoint of these particular problems, there is no local aspect of industry or agriculture which can be separated out and treated differently from the national aspect. The problems as *national* problems not only relate to local conditions but to local trade, since the competition between local and interstate trade is everywhere continuous. If, in attempting to deal with these problems, there must be a separation between the supposed local and national elements, with one governmental agency attempting to regulate the local and another the national, the attempt at regulation, for these objectives at least, might as well be given up. The problem must be dealt with as a nation-wide continuum or not at all.

This is not by any means to say that for all purposes alike the line between local matters and national matters has disappeared

in the economic field. There are countless matters which, without too great a balance of inconvenience, can be left to be regulated in one way in one state and in another way in a different state. This is not the point. What I am here insisting on is simply that for certain particular purposes and objectives, such as those suggested above, regulation must be nation-wide if it is put into effect at all, and that it must reach local as well as interstate transactions, since the two are so intermingled that the desired objective cannot be attained in one field unless the same regulation extends into the other also. If the regulatory power of the national government does not extend so far as to permit it to reach to these objectives, then they are beyond the reach of any governmental authority in this country. Such a conclusion would, I submit, be a *reductio ad absurdum* of the subordination of public welfare to verbal dogma. It results from tracing the boundary between concepts as if it were a physical boundary line between suburban lots. Actually, interstate and intrastate commerce are concepts which overlap, depending on the context in which they are used, and whether or not a transaction falls within the interstate commerce power is not wholly a matter of geography. We must remember that it is a constitution we are interpreting, and not a surveyor's manual. Sound interpretation follows, not a geographical line, but rather the line which separates matters of national concern from matters of local concern. Such a method of interpretation in connection with problems in this field has been so fully elaborated by Professor Corwin that I can pass on to my last topic.

## IV

The recovery program has extended governmental regulation and restriction to a number of new fields—for example to such matters as wages, prices, production, use of labor-saving machinery, and the like, not hitherto subject to control. One preliminary word of caution is necessary concerning some of these new regulations. Many of them are not imposed regulations, but regulations adopted by voluntary concern among the persons affected. This is true, for example, of the regulations embodied in the codes under the N.R.A. and the marketing agreements under the Agricultural Adjustment Administration. To be sure, there is doubtless an element of compulsion of a moral kind on a minority in many industries who would not come under a code at all if they did not

feel that public opinion demanded it. But in spite of this, the codes themselves embody a new type of governmental regulation in that their specific terms and provisions are not the result of mere political fiat, but have been worked out by consultation with those who are to be subject to them. Thus they do not contain provisions which the affected parties are flatly unwilling to accept. This principle of voluntary regulation, with the government acting as a stimulating and supervisory agency, is one of the major contributions of the present Administration to the technique of government. It minimizes the element of compulsion which has in the past always been emphasized as the dominant note in regulation, and emphasizes instead the element of order, adjustment, and coordination. None the less, the element of compulsion must remain in reserve, though relegated to the background.

The extension of governmental regulation and control in the past has usually been discussed in terms of an invasion of private rights. The discussion has commonly taken one of two forms. In so far as it has been general, it has set up, on the one side, the picture of private initiative, active, inventive, expressing itself in infinite diversification, and, on the other hand, the principle of regimentation leading to uniformity, dead monotony, and stagnation. The conclusion has then almost drawn itself that governmental regulation is necessarily a bad thing. In other cases where the discussion has addressed itself to some particular regulation or restriction, the latter has usually been treated as raising a purely bilateral issue between government on the one hand and a recalcitrant individual on the other, to be decided in terms of the right of the particular individual to do the thing from which government is seeking to restrain him. Any consideration of the recovery program should show the barrenness and futility of both these methods of approach, and the need for a new understanding of the problem of regulation.

Take first the approach which regards the problem of regulation as a purely bilateral one between government and the individual, and apply it, for example, to the restriction on gold withdrawals from the banks and the Treasury. Viewed from this angle, is it not an invasion of private right to forbid the individual to have something to which he is entitled? Suppose, however, we abandon the bilateral view, and regard this particular individual as but one of a series of individuals all having equally good titles to withdraw

gold. It at once becomes apparent that there is not enough gold to go round. If one takes that to which he is entitled, another will be excluded from that to which he is equally entitled. Are we to close our eyes to this consequence and decide on the basis of treating each individual as if he stood alone? In short, in order to understand regulation, we must look at individuals not individually but as linked together by the economic processes within which they function. Those of their acts which constitute elements in the process have a bearing on the economic well-being of all who are enmeshed in the process, and cannot always be safely left to purely private determination. The individual is regulated, not as an individual, but as a unit in a process.

If regulation is conceived in this way, the argument that it entails dead uniformity and stagnation falls to the ground. Properly planned, regulation touches only activities which link the individual into a social process in which others as well as he take part. Such regulation has for its object the smooth functioning of the processes on which an industrial society such as ours depends for its economic existence. This is a very different thing from regulation for the purpose of imposing a uniform code of behavior because of its supposed moral superiority or of substituting some ready-made social pattern for the processes which have grown up in the life of the community, and on the basis of which all healthy growth must proceed.

In short, the new approach which is needed to the problem of regulation is to regard the issue, not as the general one of regulation versus no regulation, nor of much regulation versus little regulation, but instead as always a special issue of each particular regulatory measure under consideration. The proper question to ask is not whether that regulation invades some abstract right like liberty or property, but whether, on the one hand, it tends to correct a maladjustment in some social process or whether, on the other, it tends to warp and interfere with such processes. These are largely questions of practical judgment rather than of abstract reasoning.

Approached from this angle, the regulatory program of the Administration challenges judgment solely on the issue of whether it does or does not so restrain tendencies at one point and liberate them at another as to bring our economic system back into working equilibrium. It represents no effort to impose a new system

ready-made. It represents no effort either to enlarge liberty or to restrain it. It represents simply an effort to divert activity at critical points from directions which seem to have proved themselves destructive of the functioning of our economic system. Whether the regulatory measures are aimed at the truly critical points, or whether the types of activity which they are designed to bring about are correctly chosen, it remains for the working of the regulations to reveal. The attitude of the Administration is one of trial and error. At best, the fact that most of the detailed regulations are administrative measures, rather than embodied in the statutes, should make it easier to alter them if found defective.

## THE POLITICAL THEORY OF GERMAN FASCISM<sup>1</sup>

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In dealing with the evolution of political thought, most historians and social scientists, until recently at least, have tended to view political behavior and the changing patterns of power in society as rational implementations of dynamic ideas. They have accordingly concerned themselves more with the development of abstract philosophical systems than with the social-psychological contexts conditioning this development. To other observers, more Marxian than Hegelian in their outlook, all political ideas are but reflections of the economic interests and class ideologies of the various strata of society. This school therefore probes for the secrets of political and social change, not in the surface phenomena of ideas, but in the progress of technology and in the shifting economic relations of groups and classes within the social hierarchy. Still others, few in number as yet, have adopted Freud as their guide. These pioneers, in so far as they have attempted to elaborate a distinctive psychology of politics, have delved for explanations of political theorizing in the realm of emotional adjustments and maladjustments. Both Marxians and Freudians reject Hegelian idealism and agree that all political thinking is to be regarded as a process of inventing justifications or counter-justifications for particular relationships of power. They differ in that the Marxians, in common with the classical political economists, usually postulate the rationality of the "economic man," while the Freudians insist upon the irrationality of social behavior and seek to explain it by reference to the "id-superego-ego" structure of the personality.

The rulers and thinkers of Fascist Germany regard it not merely as bad taste but as high treason to suggest that political ideas are products of economic interests or of neuroses. The Nazi *Weltanschauung* repudiates historical materialism and psychoanalysis with equal vehemence. Its Hegelianism is qualified, however, by the circumstance that it views political and social ideas, not as

<sup>1</sup> The author is indebted to the donors of the James-Rowe fellowship of the American Academy of Political and Social Science for an opportunity to spend part of the past year in Germany studying various phases of the National Socialist revolution.

children of Reason, but as the off-spring of obscure subjective impulses. These impulses are emphatically not to be explained by the pernicious doctrines of the Jew, Karl Marx, nor of the Jew, Sigmund Freud. They flow from *Blut und Boden*, from nation and race, from individual genius and from the esoteric depths of the German soul. But to the Western observer, who finds in this romanticism more a symptom than a diagnosis of the political mentality of contemporary Germany, German Fascism is intelligible only in terms of the economic difficulties and the psychic maladjustments of the post-war *Kleinbürgertum*. The purpose of the present article is not to explain this paradox, nor yet to undertake a basic analysis of the political ideas of the NSDAP (*Nationalsozialistische Deutsche Arbeiterpartei*) in terms of class politics and psycho-pathology,<sup>2</sup> but rather to present in systematic form a brief summary of the ideas themselves.

Despite Nazi insistence on the "organic" character of the new doctrine, its exposition in an organized résumé presents peculiar difficulties. German Fascism, unlike its Italian counterpart, developed and perfected its doctrine through fourteen years of struggle before it came to power, instead of fabricating a doctrine after seizing control of the machinery of the state. But, even more than Italian Fascism, it has always been less a doctrine than a faith—mystical, cloudy, and often not only irrational but consciously anti-rational.<sup>3</sup> Anti-intellectualism has always been a dominant note in the movement. "We think with our blood" is a favorite Nazi slogan. *Blut gegen Geist* (Spengler) is a fundamental principle of National Socialism. Hitler himself has always given feeling, emotion, fanaticism, and even hysteria, precedence over calm ratiocination.<sup>4</sup> Nazi thinking often lacks in clarity and consistency

<sup>2</sup> Cf. the interesting suggestions set forth in H. D. Lasswell, "The Psychology of Hitlerism," *Political Quarterly*, vol. 4, pp. 373-384; in F. Vergin, *Das Unbewusste Europa* (Vienna, 1931), pp. 137-145; and in Ernst Ottwalt, *Deutschland erwache!* (Vienna, 1932), *passim*.

<sup>3</sup> Mussolini, in his article, "The Political and Social Doctrine of Fascism," *Enciclopedia Italiano*, asserts: "There was much discussion, but—what was more important and more sacred—men died. They knew how to die. Doctrine, beautifully defined and carefully elucidated, with headlines and paragraphs, might be lacking; but there was to take its place something more decisive—faith."

<sup>4</sup> Cf. Adolf Hitler, *Mein Kampf*, *passim*, vol. 1, 1925; vol. 2, 1927; hereinafter cited as "M.K.," with page references to the 17th German edition (two volumes in one), Munich, 1933. Cf. "Was wollen wir? Frei sein! Freie, deutsche Arbeiter in einem freien, deutschen Lande! Wir leben heute in einer unerhörten Knechtschaft,

what it exhibits in fervor. Its logical integration into a system of ideas is, therefore, somewhat artificial and misleading.

It is difficult, moreover, to select authoritative party doctrine from the enormous outpouring of Nazi literature because the party has never set up a College of Cardinals to determine what is orthodox,<sup>5</sup> nor has it expressly forbidden its adherents and sympathizers to voice personal views for which the organization assumes no responsibility. There is, to be sure, Hitler's autobiography, *Mein Kampf*, which is now the "bible" of the movement. There is the party program of 25 points, with Gottfried Feder's commentaries, adopted February 24, 1920, and declared unalterable on May 22, 1926.<sup>6</sup> There is Feder's *Der Deutsche Staat* (1923), which Hitler pronounced the "catechism" of the movement at the time of its publication.<sup>7</sup> And there is the interesting series of official brochures in the *Nationalsozialistische Bibliothek*.<sup>8</sup> But many years have elapsed since the appearance of some of these scriptures. They have been followed, and at points contradicted, by thousands of more recent books, pamphlets, and speeches. A critical review of party bibliography would require hundreds of pages of digest and commentary. All that can be attempted here is a general treatment of the trend of Nazi political thought as represented by outstanding leaders and publicists.

#### I. RACIAL NATIONALISM

Anti-semitism and Pan-German "Aryan" nationalism are the negative and positive poles of the Nazi world-outlook. Both obviously antedate the NSDAP by many decades. The Aryan myth, with its corollary of Teutonic superiority, was first persuasively presented by Comte Arthur de Gobineau in 1852 in his *Essai sur l'inégalité des races humaines*. In 1899 the Germanized Englishman, Houston Stewart Chamberlain, published his *Die Grundlagen des*

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in der Heimat und in der Welt. Zum Freiwerden gehört Fanatismus und Glut . . . Wahrer National-Sozialismus ist Instinkt, nicht Wissen. Der unwissendste Mensch mit modernem politischen Instinkt ist wertvoller für den Neubau des Reiches als der klügste und gelehrteste Intelligenzler bourgeois Bewegung." J. Goebbels, *Die Zweite Revolution* (Zwickau, 1926), pp. 19 and 22.

<sup>5</sup> At the Bamberg Conference of February, 1926, however, Gottfried Feder was designated as official interpreter of the program.

<sup>6</sup> *Das Programm der N.S.D.A.P. und seine weltanschaulichen Grundgedanken* von Gottfried Feder (15th ed., Munich, 1933), hereinafter referred to as "Prog."

<sup>7</sup> 10th ed., Munich, 1933, hereinafter referred to as "D.S."

<sup>8</sup> Munich, 1920-33, hereinafter designated as "NSB."

*neunzehnten Jahrhunderts*, which also affirmed the superiority of the Germans, but defined them in terms of moral qualities rather than of physical characteristics. These two works were points of departure for all later advocates of white superiority and Nordic supremacy, among whom the best known in America in recent years have been Madison Grant and Lothrop Stoddard.

In Germany, the development of the Aryan myth was closely paralleled by the growth of political anti-semitism.<sup>9</sup> The emancipation of German Jewry, begun by Napoleon I in the Rhineland, was not completed until after 1848. Politically organized anti-semitism, with its religious roots stretching far back into the Middle Ages, became active in German petty bourgeois circles as soon as the *Kleinkürgertum* began to be pinched economically between organized labor and corporate business. The Jew early became the scapegoat of the resulting resentment.<sup>10</sup> Adolf Stöcker's *Christlich-Soziale Arbeiterpartei* flourished in Prussia in the eighties.<sup>11</sup> Religious, moral, and economic complaints against the Jews led eventually to the emergence of a racial myth reflected in the attitudes of the *Deutschsoziale Partei* and the *Antisemitische Volkspartei*, both established in 1889.<sup>12</sup> By 1893, there were sixteen anti-semitic deputies in the Reichstag. Various anti-semitic political groups have been continuously represented in the German national legislature ever since.

Hitler, without having read Gobineau or Chamberlain, and without being familiar with the anti-semitic movement in northern Germany, acquired his anti-semitic fixation in pre-war Vienna, where he struggled in his youth to keep body and soul together as a would-be architect and building trades laborer.<sup>13</sup> Under the influence of Karl Lüger, anti-semitic mayor of the city, he arrived

<sup>9</sup> Cf. E. Ottwalt, *Deutschland erwache!*, pp. 42-72, and G. Winter, *Der Antisemitismus in Deutschland* (Magdeburg, 1896), *passim*.

<sup>10</sup> Cf. W. Frank, *Hofprediger Adolf Stöcker und die Christlich-Soziale Bewegung* (Berlin, 1928).

<sup>11</sup> Cf. Eugen Dühring, *Die Judenfrage als Frage des Rassencharakters* (Berlin, 1892), reissued at Leipzig in 1930. Also, Kurt Wawrzinek, *Die Entstehung der deutschen Antisemiten-Parteien* (Berlin, 1927).

<sup>12</sup> "Ich kam als 17 jähriger Mensch nach Wien und lernte dort drei bedeutsame Fragen studieren und beobachten: die soziale Frage, das Rassenproblem und endlich die Marxistische Bewegung. Ich ging von Wien weg als absoluter Antisemit, als Todfeind der gesamten Marxistischen Weltanschauung, als alldeutsch in meiner politischen Gesinnung." Address to the court, February 26, 1924, in *Adolf Hitlers Reden* (Munich, 1933), p. 96.

at the conclusion that the Jews were the source of many contemporary evils.<sup>13</sup> In post-armistice Germany, anti-semitism flourished in reactionary nationalist and militarist circles—nowhere more so than in Munich, where Hitler's regiment was stationed and where he began his political career by becoming "Member No. 7" of the then insignificant *Deutsche Arbeiterpartei*. Under the spell of his genius as orator and organizer, this little group became the nucleus of the NSDAP. Its 25-point program, proclaimed in the Hofbrauhaus in February, 1920, was largely Hitler's work. The leader's political ideas were already fixed. They were simple verbalizations of his ardent anti-semitism and his fanatical Pan-German patriotism, suitable for popular consumption by the crowds which gathered to hear him in the sundry beer halls of Munich. Hitler's Munich contemporaries, Gottfried Feder, preacher of strange economic doctrines, and Dietrich Eckart, drunken literary genius, played a significant rôle in the formulation of the political philosophy which came to dominate the *Hitlerbewegung*. The anti-semitic *motif* was prominent in all of Hitler's speeches during the period between the establishment of the party and its temporary eclipse after the Hitler-Ludendorff *putsch* of November 8–9, 1923.<sup>14</sup> It also dominated the *Deutschvölkische Freiheitspartei* of von Graefe, Wulle, and Hennig, which cooperated with the NSDAP in 1924–25 under the leadership of Ludendorff and Gregor Strasser.

Nazi appeals were addressed from the beginning to a *Kleinbürgertum* filled with resentment against capital and labor, the upper and nether mill-stones of an economic system which seemed to be grinding the German "forgotten man" into the dust. This resentment found voice in attacks upon "capitalism" and upon "Marxism," for the petty bourgeoisie felt itself being dragged most unwillingly to the social level of the proletariat through the pressure of corporate industry and finance. Trusts and trade unions were both assailed as iniquitous and "unpatriotic." With consummate skill, the Nazi leaders, in their quest, on the one hand, for funds from "big business" and, on the other, for converts from the middle classes, resolved the logical inconsistencies in this double resentment by deflecting it against the Jews. The nation, they asserted, was not menaced by a socially-minded, patriotic *German* capitalism nor by a patriotic *German* socialism, but only by international,

<sup>13</sup> M.K., pp. 244f., 425f., 475f., etc.

<sup>14</sup> Cf. *Hillers Reden*, *passim*.

Jewish *Hochfinanz* and by international, Jewish-Marxist socialism. The *Kleinstbürgertum* was readily convinced that its real enemies, above and below, were the Jews. Under Nazi persuasion, it perceived that all the things it had come to detest—pacifism, internationalism, Marxism, Freemasonry, Esperanto, nudism, reparations, democracy, inflation, liberalism, financial exploitation, parliamentarianism, and sexual immorality—were but phases of a Jewish plot against the Fatherland.<sup>15</sup> The integration of these divergent negative responses into a general assault upon the Weimar Republic, following their ideological unification through antisemitism, is the most brilliant psychological achievement of Nazi propaganda.

This process was accompanied by the elaboration of a highly ingenious theory of a Jewish world conspiracy against the “white” race. The specific content of this theory varies somewhat with the Nazi sources which are consulted.<sup>16</sup> Many of the charges are based upon the alleged “Protocol of the Elders of Zion,” a mysterious document supposedly prepared in the mid-nineteenth century as a campaign plan of Jewish world conquest.<sup>17</sup> In Nazi literature, the Jews are usually viewed as a hybrid Oriental-Negro stock which, for thousands of years, has practiced “incest,” i.e., endogamy, to keep itself “pure” and has, at the same time, sought to poison the blood of superior races through miscegenation.<sup>18</sup> Since its expulsion

<sup>15</sup> “Die Unterhöhlung des germanischen Persönlichkeitsbegriffes durch Schlagworte hatte schon lange begonnen. Die Begriffe ‘Demokratie,’ ‘Majorität,’ ‘Weltgewissen,’ ‘Weltsolidarität,’ ‘Weltfrieden,’ ‘Internationalität der Kunst,’ usw. zerstzten unser Rassebewusststein, züchteten die Feigheit, und so müssen wir heute sagen dass der schlichte Türke mehr Mensch ist als wir . . . Dies war die unausbleibliche Wirkung der in der Hand der internationalen Börse befindlichen Presse. Der Marxismus wurde der Zutreiber der Arbeiter, die Freimaurerei bildete für die ‘geistigen’ Schichten die Zersetzungsmaschine, das Esperanto sollte die ‘Verständigung’ erlichtern. Das gegebene Bindeglied zwischen diesen Bewegungen war der allein international verbreitete nationale Jude.” Hitler, September 18, 1922, *Hitlers Reden*, p. 37.

<sup>16</sup> Perhaps the most erudite exposition of this thesis is to be found in Alfred Rosenberg’s *Der Mythos des 20. Jahrhunderts—Eine Wertung der seelische-geistigen Gestaltenkämpfe unserer Zeit* (Munich, 1930).

<sup>17</sup> Gottfried zur Beck (Hrsg.), *Die Geheimnisse der Weisen von Zion* (15th ed., Munich, 1933).

<sup>18</sup> Thus Hitler, *M.K.*, p. 357: “Der schwarzhaarige Judenjunge lauert stundenlang, satanische Freude in seinem Gesicht, auf das ahnungslose Mädchen, das er mit seinem Blute schändet und damit seinem, das Mädchens Volke, raubt. Mit allen Mitteln versucht er die rassischen Grundlagen des zu unterjochenden Volkes zu verderben. So wie er selber planmäßig Frauen und Mädchen verdirtbt, so schrekt

from Palestine, this race has lived as a parasite on other peoples, practicing the ritual murder of Christian children, destroying the race purity of its victims, and seeking in every possible way to bring about the destruction of the host upon which it preys. In modern times, its primary weapons have been prostitution and syphilis, the liberal press, intermarriage, Freemasonry, parliamentary democracy, international finance, and Bolshevism.<sup>19</sup> More specifically, the Jews, through their alleged control of the labor movement, the Börse, the Socialist party, the liberal-Marxist press, etc., are held responsible for Germany's defeat in the Great War and for the establishment of the "Jew republic" of the "November criminals" of 1918. All of Germany's woes since the Armistice are likewise attributed to the Jews.<sup>20</sup> The ultimate objective of Judaism is the complete destruction of the German people through bastardization, pacifism, liberalism, and communism.<sup>21</sup>

The first prerequisite to the protection of Germany from this menace is the awakening of "race-consciousness" among her people. In the course of its development, the Nazi doctrine of race, as a positive creed of German superiority, has passed through many vicissitudes. The program of 1920 did not employ the now universal term "Aryan," but spoke only of "German blood" and "Volksgenossen."<sup>22</sup> The same is true of Feder's *Der deutsche Staat*.

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er auch nicht davor zurück, selbst in grösserem Umfange die Blutschranken für andere einzurissen. Juden waren es und sind es, die den Neger an den Rhein bringen, immer mit dem gleichen Hintergedanken und klaren Ziele, durch die dadurch zwangsläufig eintretende Bastardierung die ihnen verhasste weisse Rasse zu zerstören, zu ihren Herren aufzusteigen. Denn ein rassereines Volk, das sich seines Blutes bewusst ist, wird vom Juden niemals unterjocht werden können. Er wird auf dieser Welt ewig nur der Herr von Bastarden sein."

<sup>19</sup> Cf. M.K., pp. 270-275, p. 265f.; Anton Meister, "Die Presse als Machtmittel Judas, NSB No. 18; Dr. Rudolf, *Nationalsozialismus und Rasse*, NSB No. 31; Alfred Rosenberg, *Das Verbrechen der Freimaurerei* (Munich, 1921); Friedrich Wichtl, *Weltfreimaurerei, Weltrevolution, Weltrepublik* (Munich, 1929); Gottfried Feder, *Die Juden*, NSB No. 45; Dietrich Eckart, *Der Bolshevismus von Moses bis Lenin* (Munich, 1919).

<sup>20</sup> Alfred Rosenberg, *Die Entwicklung der deutschen Freiheitsbewegung* (Munich, 1933); Johann von Leers, *14 Jahre Judenrepublik*, 2 vols. (Berlin, 1933).

<sup>21</sup> Hitler, in M.K., pp. 310f., traces through in detail the consecutive steps of the Jewish world conspiracy, culminating in the Communist "world revolution."

<sup>22</sup> Prog., Punkt 4: Staatsbürger kann nur sein, wer Volksgenosse ist. Volksgenosse kann nur sein, wer deutsches Blutes ist, ohne Rücksichtnahme auf Konfession. Kein Jude kann daher Volksgenosse sein.

Hitler, in *Mein Kampf*, used the term "Aryan" repeatedly without giving it precise definition. Rosenberg, a Baltic German émigré from Russia, is a champion of blonde, blue-eyed Nordicism, but his doctrine is scarcely acceptable to such obvious brunettes as Hitler and Goebbels. At the present time, however, the enormous Nazi literature dealing with race problems exhibits a fair degree of uniformity, thanks to the work of Hans Gunther, appointed "professor of social anthropology" at the University of Jena by Minister Frick in June, 1930. In the evolution of the Aryan myth, Gunther is the successor of Gobineau and Chamberlain. In his voluminous writings,<sup>23</sup> he depicts the Germans as a blend of six "races": Nordic, Westic, Dinaric, Ostic, Baltic, and Falic. The Nordic element, constituting only six to eight per cent of the population, has been decimated by war, emigration, and tuberculosis, but is the most valuable biological element in the nation. It is probable, according to Gunther, that all creative cultural endeavor in all ages and in all civilizations was the work of a minority blessed with Nordic blood. Every effort must therefore be made, through race hygiene and eugenics, not only to protect the nation from the "Jewish ferment of decomposition," but to increase the proportion of Nordic stock in the population. Gunther's ideas have constituted a point of departure for a whole army of scholars who have propounded his gospel in a bewildering variety of works.<sup>24</sup>

The political implications of the new anthropology have furnished the ideological basis for many of the decrees of the dictatorship. The original party program called for the disfranchisement and expatriation of Jews (Points 4 and 5), the granting of official appointments only to citizens (Point 6), a ban on non-German immigration and the expulsion of all non-Germans who entered the Reich after August 2, 1914 (Point 8), the protection of mothers and infants, the suppression of child labor, and the fostering of sports and gymnastics (Point 21), and the expulsion of the Jews from

<sup>23</sup> *Der Nordische Gedanke unter den Deutschen, Rassenkunde Europas, Rassenkunde des deutschen Volkes, Rassenkunde des jüdischen Volkes, Adel und Rasse*, etc. (Munich, 1927f).

<sup>24</sup> Cf. Halfdan Bryn, *Der nordische Mensch*; Paul Schultze-Naumburg, *Kunst und Rasse*; Josias Tilleius, *Rassenseele und Christentum*; L. Schemann, *Hauptepochen und Hauptvölker der Geschichte in ihrer Stellung zur Rasse*; L. Clauss, *Von Seele und Antlitz der Rassen und Völker*; F. Lenz, *Menschliche Auslese und Rassenhygiene*; H. W. Siemens, *Vererbungslehre, Rassenhygiene und Bevölkerungspolitik*; M. Staemmler, *Rassenpflege im völkischen Staat* (all Munich, 1927-33), etc., etc.

journalism (Point 23). The Nazi state is conceived to be a "racial" state whose first care should be the biological fitness and racial purity of its citizens.<sup>25</sup> Up to the time of writing, the Jews have not yet been disfranchised or deprived of citizenship, but they have been expelled from all public and quasi-public offices and subjected to a variety of educational, vocational, and social restrictions. Mixed marriages may be dissolved at the option of the Aryan party and will in the future become a penal offense under the new criminal code. The sterilization of persons with "hereditary diseases" began on January 1, 1934. The minister of economics in the Hitler cabinet once proposed that all German women be divided into four classes: only the first, consisting of racially pure Nordics, would be permitted to marry the new noblemen of the Third Reich; those of the second class might be qualified to marry after a period of probation; third class women might marry inferior men, but the husbands must be sterilized to prevent procreation; fourth class women might neither marry nor have children.<sup>26</sup> Alfred Rosenberg, in his *Mythos des 20. Jahrhunderts*, has urged polygamy for the Nordic nobility on eugenic grounds. These suggestions have not yet been acted upon officially, but "non-Aryans," i.e., Jews, have already been reduced to the level of a pariah caste and further legislative measures designed to purify the race and to increase the population are to be anticipated.

The race myth plays the same rôle in the Nazi cult of racial nationalism as the class myth in the Marxian world outlook. The new Germany envisages world history as a conflict between races. The white, or "Aryan," race is the source of all culture, the Negro is an inferior breed, and the Jew is the source of all corruption. The Germans represent the highest point of Aryan development. They must insist upon "honor," "freedom," and "equality of rights" with the victors of 1918.<sup>27</sup> The Pan-German "racial state" of the

<sup>25</sup> Cf. M.K., pp. 425-448, and Rudolf Roebling, "Staat und Volk," in *Hochschule für Politik der N.S.D.A.P.* (J. Wagner und A. Beck, Hrsg.) (Munich, 1933).

<sup>26</sup> Walter Darré, *Neuadel aus Blut und Boden* (Munich, 1930).

<sup>27</sup> These were the slogans of the election campaign of October-November, 1933. The magic potency of the words "*Ehre*" and "*Gleichberechtigung*" among the National Socialist *Kleinbürgertum* is perhaps not unrelated to the circumstance that most of the Nazi leaders and the great majority of their followers, as members of a social class suffering from lack of prestige, are afflicted with unconscious inferiority feelings. These feelings have been transferred to the symbols of race and nation, and find expression in discrimination against the Jews, in the prevalent national

future must include within its borders all German-speaking peoples in Europe. It must follow the heroic traditions of the Teutonic Knights and win land in the East to insure its future. This task demands the spiritual unification of the nation and the passionate devotion of all Germans to the cause.<sup>28</sup> It requires the denunciation of the peace treaties and the building of a Greater Germany with more land and colonies.<sup>29</sup> It requires parity of armaments with the Reich's neighbors and an alliance with Great Britain and Italy.<sup>30</sup> The enemies of the future are France, land of democracy, Freemasonry, and Jewish-Negro militarism, and Russia, citadel of the Jewish *Weltpest*—Bolshevism. Germany, militarily invincible, was "stabbed in the back" in 1918 by the Jewish-Marxist traitors. With the liquidation of the Jewish menace and the "November criminals," the way will be clear for the fulfillment of the German mission and the realization of the Pan-German dream.<sup>31</sup>

## II. THE NEW SOCIALISM

Successful politicians must always identify themselves with words and other symbols which already evoke favorable responses from those to whom they are addressed. In the United States, the adjective "socialist" has long been a term of opprobrium, since it calls forth negative reactions from the masses. In Germany, on the contrary, "socialism" has long been a synonym for social progress. Thanks to decades of Social Democratic propaganda, even the term "social revolution" sounds attractive rather than repellent to the proletariat and the lesser *Kleinbürgertum*. Anti-semitic and

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"persecution complex," and in chauvinistic braggadocio. In his final election appeal to the German workers, Hitler declared: "Ich habe mich niemals als Privatmann in eine vornehme Gesellschaft eingedrängt, die mich nicht haben wollte, oder die mich nicht als gleichwertig ansah. Ich benötige sie dann nicht, und das deutsche Volk hat genau soviel Charakter! Wir sind nicht irgendwo als Schuhputzer, als Minderwertige beteiligt. Nein, entweder gleiches Recht, oder die Welt sieht uns auf keiner Konferenz mehr!" (*Völkischer Beobachter*, Nov. 11, 1933.)

<sup>28</sup> Hitler, *M.K.*, p. 475: "Die Angst unserer Zeit vor Chauvinismus ist das Zeichen ihrer Impotenz . . . Die grössten Umwälzungen auf dieser Erde wären nicht denkbar gewesen, wenn ihre Triebkraft statt fanatischer, ja hysterischer Leidenschaften nur die bürgerlichen Tugenden der Ruhe und Ordnung gewesen wäre."

<sup>29</sup> *Prog.*, Punkten 1-3.

<sup>30</sup> Cf. *M.K.*, pp. 689-705.

<sup>31</sup> Cf. Gustav Sondermann, *Der Sinn der völkischen Sendung* (Munich, 1924); Heinrich Mass, *Deutsche Wehr*, *NSB* No. 47; *M.K.*, pp. 726-758; J. Goebbels, "Nationalsozialismus als Staatspolitische Notwendigkeit," in *Nationalsozialistisches Jahrbuch*, 1933, pp. 208-214.

reactionary groups of super-patriots in post-war Munich adopted such terms as a matter of course in their efforts to win a popular following. In the period of his preliminary political groping, Hitler toyed with the name "Social Revolutionary party." The "German Labor party" of Anton Drexler added the adjectives "national" and "socialist" to its name shortly before Hitler became a member in 1919. Anti-Marxism was from the outset the corollary of anti-semitism, but this did not deter Hitler from using red flags and posters and calling his enemies "bourgeois" in his efforts to attract supporters.

"National Socialism," however, is more than a campaign catch-word. Hitler, unlike Mussolini, was never himself a Marxian socialist. But his movement, like its Italian counterpart, has championed "socialism" vigorously—a purified, patriotic, non-Jewish, anti-Marxist, "national" socialism. This conception of a purely national socialism, in opposition to Marxian internationalism, is of course not new. The old Prussian state of Frederick the Great is the historical prototype of the Nazi ideal. Fichte advocated a comparable conception of the ideal state early in the nineteenth century. In the development of the German labor movement, Ferdinand Lassalle's socialism was distinctively national in contrast to Marxism. Paul de La Garde, professor of theology at Göttingen, preached a similar doctrine of a Pan-German, authoritarian, "social" state in the eighties, but without result. In 1896, Friedrich Naumann established the "*Nationalsoziale Verein*," but he was also a prophet in the desert. In 1922, Moeller Van Den Bruck published *Das Dritte Reich*, in which the idea of a German, anti-Marxian, anti-liberal socialism was clearly set forth.<sup>32</sup>

The precise political and economic implications of this brand of socialism, however, have been shrouded in a certain obscurity. The familiar Nazi slogans, "*Freiheit und Brot*" and "*Gemeinnutz geht vor Eigennutz*," throw little light on the problem.<sup>33</sup> Hitler's economic ideas in the period prior to the formulation of the program were largely molded by Gottfried Feder, who preached social salvation through "breaking the bonds of interest slavery" ("*Brechung der Zinsknechtschaft*"). According to his doctrine, there are two kinds of capital: national, creative, Aryan capital, and in-

<sup>32</sup> Hanseatische Verlag, Hamburg, 1922, 3rd ed., 1931.

<sup>33</sup> Goebbel's formulations are scarcely more illuminating. Cf. his *Das kleine ABC des Nationalsozialisten* (Greifswald, 1925), pp. 5 and 9.

ternational, exploitive, Jewish capital (*Börsen- und Leihkapital*). This distinction came to Hitler like a revelation. He perceived "like a flash" that the real purpose of Marx and his followers in attacking the productive capital of the national economy was to pave the way for the domination of Jewish, international finance-capital. The Feder creed was incorporated into the party program. The "socialistic" proposals in the Twenty-five Points prescribe the duty of all citizens to work (Point 10), the abolition of incomes unearned by work (Point 11), the ruthless confiscation of war profits, the nationalization of all businesses which up to the present have been organized into trusts, profit-sharing in wholesale trade, old age pensions, municipalization of large department stores and their leasing out at low rates to small merchants, the death penalty for usurers, profiteers, etc., prevention of speculation in land, abolition of interest on land mortgages, and confiscation of land for community purposes (Points 12-18). On April 13, 1928, Hitler rendered an official interpretation of the last proposal in which he explained that since the NSDAP "admits the principle of private property," the demand for the confiscation of land could refer only to land illegally acquired or used contrary to the national welfare. The proposal, he said, was "directed in the first instance against the Jewish companies which speculate in land."

These proposals, as well as Feder's economics, reflect a desire on the part of the Nazis to make political capital of the hostility toward "big business," chain stores, and mortgage-holders among the peasantry and small bourgeoisie. This hostility was in part deflected upon the Jews,<sup>34</sup> but the political exigencies of Nazi strategy have never made possible the clear formulation of an intelligible economic program. Goebbels designated "*Kapitalismus*" as the chief enemy of National Socialist freedom, and asserted that Marxism was incapable of overcoming this enemy because its leaders worked hand in hand with the representatives of "*Börsen-*

<sup>34</sup> "Ganz entgegen dem jüdisch-materialistischen Geiste aber ist die Brechung der Zinsknechtschaft, die in den Punkten 11-19 des Programms ihren Ausdruck gefunden hat. Mit dem Augenblick, wo die Zinsknechtschaft und der ihr zugrunde liegende Goldwahn—die Goldvaluta—gebrochen sind, ist im Staatsleben der jüdisch-materialistische Geist auf dem Gebiete der gesamten Wirtschaft gebrochen, und der Träger und Nutzniesser der Zinsknechtschaft, in der wir uns befinden, und des ihr zugrunde liegenden Goldwahns ist seiner Gewalt über uns beraubt und wird darum nicht mehr der Vampyr am Volkskörper sein können, der er heute ist." G. Feder, *Die Juden*, pp. 8-9.

*kapital*" and are of the same Jewish race.<sup>35</sup> But Nazi definitions of "socialism" have seldom been consistent or clear. Feder's efforts to distinguish between "loan-capital" and "productive-capital" have remained incomprehensible to uninitiated economists. He, along with other Nazi leaders, has at various times proposed the abolition of the gold standard, the repudiation of public debts (especially reparations), the non-contraction of future public debts, the abolition of taxes, and the financing of public works by certificates (the so-called "*Federgeld*") secured by the works themselves.<sup>36</sup> But an organic economic doctrine of the party has never emerged. Inconsistency and incomprehensibility, however, are more often political assets than liabilities in winning the masses. In May, 1930, in the course of a debate in Berlin with Otto Strasser, then leader of the left wing of the party, Hitler disclaimed any intention of disturbing business in the event of his securing power.<sup>37</sup> The radical economic proposals of the original program have repeatedly been reinterpreted to assure the business world that no dangerous financial or economic experiments were to be anticipated from a Nazi government.

The course of events since January 30, 1933, has confirmed the impression that "National Socialism" is far more national than it is socialism. Except for the labor unions, German economic institutions have undergone no revolutionary alteration. No property has been confiscated save that of the unions and of the political enemies of the Nazi régime. Banks have continued to operate as before. The stock market has done business as usual. Interest rates have

<sup>35</sup> Goebbels, *ABC*, p. 13: "Dann sind also die Nationalsozialisten die Beschützer der Industrie-Kapitalisten? Durchaus nicht! Sie wollen diese Industrie-Kapitalisten zwingen, dem Arbeiter Eigentumsrecht zu geben an dem Werke, an dem er arbeitet. Aber sie wissen sehr wohl, dass das nicht möglich ist, wenn nicht zuerst die Knechenschaft unter der Zinspeitsche der Judenbörse besiegt ist." Goebbels here defines the "Brechung der Zinsknechenschaft" quite simply as "die Beseitigung der tyranischen Geldgewalt der Börse in Staat und Wirtschaft, die das schaffende Volk ausbeutet, moralisch verseucht und zum nationalen Denken unfähig macht."

<sup>36</sup> Cf. G. Feder, *D.S.*, pp. 135-142, and *Das Manifest zur Brechung der Zinsknechenschaft des Geldes* (Munich, 1919); Hans Buchner, *Die Goldene Internationale*, NSB No. 3, and *Grundriss einer nationalsozialistischen Wirtschaftstheorie* (Munich, 1930); Heinrich Dräger, *Arbeitsbeschaffung durch produktive Kreditschöpfung*, NSB No. 41; Ferdinand Fried, *Das Ende des Kapitalismus* (Jena, 1931).

<sup>37</sup> Cf. Otto Strasser, *Ministersessel oder Revolution?* (Berlin, 1930), with text of debate and statement of Strasser's reasons for leaving the NSDAP. A detailed, though hostile, analysis of the party's economic program is to be found in F. David, *Ist die NSDAP eine sozialistische Partei?* (Vienna, 1933).

not been tampered with. Inflationary experiments with the currency have been avoided up to the time of writing. No trusts or other businesses have been nationalized. No department stores or chain stores have been municipalized or leased to small merchants. Such interference with private business as has taken place has been inspired by private grudges or ambitions, and has been strongly curbed by the party leaders. All business organizations, to be sure, have been subjected to the universal process of *Gleichschaltung* whereby the predominance of Nazi influence has been assured. A highly organized system of quasi-public assistance for the jobless has been instituted, involving numerous collections and contributions from all employed workers. The "winter relief" campaign of 1933-34, based on subscriptions and donations from everyone not completely destitute, has been presented by the authorities as "true socialism" and "socialism of the deed." But it is obvious that German capitalism and the whole socio-economic structure of German society remain unchanged in all fundamentals.

In Fascist Germany, as in Fascist Italy, the new socialism in practice has meant the destruction of Marxism and the suppression of the independent trade unions, along with the integration of professional and business associations and the introduction of certain measures designed to promote "economic planning." Autarchy has been championed in principle, but moderated in practice. The welfare of the peasantry has been a special care of the Nazi régime, for the peasantry is regarded as the source of old Germanic virtues and the backbone of national strength.<sup>38</sup> The *Kleinbürgertum* has likewise been given special protection, though its material benefits have not thus far kept pace with the psychic satisfactions it has derived from the "national awakening." Corporate industry and finance have welcomed the absence of labor troubles in the new Germany, while labor has seen its Marxist parties destroyed and its unions converted into cogs in the Nazi *Deutsche Arbeitsfront*. The Nazi movement, while promoting the complete organization of labor, insists that its organizations shall not be weapons of class struggle, but merely agencies to represent occupational interests.<sup>39</sup> Since March 5, 1933, there have been no strikes in Germany.

<sup>38</sup> Cf. Walter Darré, *Das Bauerntum als Lebensquell der Nordischen Rasse* (Munich, 1929).

<sup>39</sup> Hitler, *M.K.*, p. 675: "Nicht die Gewerkschaft ist 'klassenkämpferisch,' sondern der Marxismus hat aus ihr ein Instrument für seinen Klassenkampf gemacht."

## III. THE THIRD REICH

The Nazi conception of the state is an outgrowth of the racial-national-social *Weltanschauung* which has already been outlined. This conception postulates the inequality of men, the subordination of individual liberty to national "freedom," the rule of an élite, and unlimited power over the nation, accompanied by unlimited responsibility to God and the people, on the part of a dictator. A political order based upon these postulates is regarded as the logical corollary of an economic and social order based upon private property, the profits system, individual initiative, and inequality of wealth and income. The liberal order of democratic parliamentarianism is viewed as a dangerous anachronism. The economic analogue of democracy is not capitalism, but communism. The political analogue of capitalism is not democracy, but oligarchy and dictatorship, which, under contemporary conditions, are regarded as prerequisites to national strength and to the preservation of the established social and economic hierarchy. The organic, corporative, authoritarian state, by preventing class conflict, destroying Marxism, and suppressing pacifism and internationalism, will at the same time revitalize private-property economy and unify the nation for the accomplishment of its mission.<sup>40</sup>

From a genetic point of view, the Nazi state-theory, like that of Italian Fascism, is largely a product of the party's war against parliamentary democracy. Just as the racial doctrine of Aryan supremacy emerged out of attacks upon Jewry, so the political doctrines of National Socialism emerged out of assaults upon the

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Er schuf die wirtschaftliche Waffe, die der internationale Weltjude anwendet zur Zertrümmerung der wirtschaftlichen Basis der freien, unabhängigen Nationalstaaten, zur Vernichtung ihrer nationalen Industrie und ihres nationalen Handels und damit zur Versklavung freier Völker im Dienste des überstaatlichen Weltfinanz-Judentums."

<sup>40</sup> This interesting line of reasoning, which incidentally is also quite acceptable to extreme Marxians, was persuasively presented by Hitler in his address of January 27, 1932, before the west German industrialists in the Industry Club of Düsseldorf: "Es ist ein Widersinn, wirtschaftlich das Leben auf dem Gedanken der Leistung, des Persönlichkeitswertes, damit praktisch auf der Autorität aufzubauen, politisch aber diese Autorität der Persönlichkeit zu leugnen und das Gesetz der grösseren Zahl, die Demokratie, an dessen Stelle zu schieben... Der politischen Demokratie analog ist auf wirtschaftlichem Gebiet aber der Kommunismus." *Vortrag Adolf Hitlers vor westdeutschen Wirtschaftlern im Industrie-Klub zu Düsseldorf am 27. Januar 1932* (Munich, 1932), p. 10.

"system" of the Weimar Republic. These doctrines, in their present form, are nowhere expressly stated in the Twenty-five Points of 1920. The original program championed equality of rights and duties of citizens (Point 9), denounced Roman law as a servant of "the materialistic world order" (Point 19), called for the formation of a national army (Point 22), demanded the suppression of liberty of education and of the press (Points 20 and 23), and upheld religious liberty while combatting "the Jewish materialist spirit" (Point 24). The last point asserted:

That all the foregoing may be realized, we demand the creation of a strong central power in the Reich; unquestioned authority of the politically centralized Parliament over the entire Reich and its organizations; and formation of chambers for classes and occupations for the purpose of carrying out the general laws promulgated by the Reich in the various states of the confederation.

Here, amid faint echoes of bourgeois liberalism, one finds no clear demand for dictatorship and governmental absolutism. Neither is this demand voiced in Feder's original commentary on the program. But in the course of its campaign for popular support in competition with the democratic and Marxist parties, the NSDAP attacked the political ideology of the Weimar constitution and gradually formulated its own anti-Marxian, anti-democratic, anti-parliamentary political creed. This creed is presented somewhat tentatively in Moeller Van Den Bruck's *Das Dritte Reich* (1922).<sup>41</sup> It can be seen taking more definite form in Feder's *Der deutsche Staat* (1923).<sup>42</sup> It receives even clearer expression in Hitler's *Mein Kampf* (1925-27). Here one finds bitter denunciation of such elements of liberalism as existed in the Hohenzollern Empire and reiterated indictments of political democracy and majority rule. Democracy is presented as the forerunner of Marxism. As against the democratic state forms which emerged from the French Revolu-

<sup>41</sup> Cf. pp. 69-122. The mystic conception of an ideal "Third Reich" to succeed the Hohenstaufen Empire of the Middle Ages and the modern Empire of Bismarck and William I was not invented by the NSDAP, but was prevalent in all reactionary circles during this period.

<sup>42</sup> For example, p. 31: "Der Diktator muss vollkommen frei sein von allen unnötigen Hemmungen und Bedenklichkeiten, für ihn darf es keine Zwangsläufigkeiten geben, denn er muss es sein, der Geschichte macht, er greift mit kühner, entschlossener Hand zu, wenn seine Stunde da ist, er verkörpert die Sehnsucht der Nation, und deshalb irrt er nie und wird getragen von der fanatischen Liebe derjenigen, denen seine Tat Befreiung bringt. Er muss zu hassen verstehen, so stark und rücksichtlos, wie er sein Volk und seine heilige Aufgabe liebt."

tion, Hitler champions true "Germanic democracy," involving the free election of an all-powerful leader who will decide all questions without recourse to the majority principle.<sup>43</sup>

The subsequent development of this doctrine was shaped by the exigencies of the Nazi fight for power. After the disaster of the Munich *putsch* of November 8-9, 1923, the party renounced revolutionary violence as a method of overthrowing the Weimar system and repeatedly insisted upon the "legality" of its tactics. Legality required the party to seek the favor of a majority of the electorate through the use of "democratic" campaign methods. The party itself, however, became anti-democratic in its structure as soon as Hitler assumed leadership. The election of party leaders as well as discussions and votes on party policies were abolished as early as 1921. In the years that followed, the intricately hierarchical and completely autocratic party machine of the NSDAP, with *Der Führer* exacting unquestioning obedience from his subordinates, progressively conquered the emotions of the masses by means of a perfected technique of high-pressure advertising. The dictatorial structure of the party simultaneously gave it unity and power in electoral contests and helped to build the illusion in the minds of the masses that Hitler was a heaven-sent Messiah in whom all political wisdom resided. In Hitler's own view, (the principle of the party structure was identical with the principle upon which the old Prussian army was organized: authority from the top down, responsibility from the bottom up.)<sup>44</sup>

This principle has now become the basis of the German Fascist state. It is the antithesis of parliamentarianism, which prescribes that authority shall be conferred upon political leaders from below and that the lines of responsibility shall run from those who wield power to those who have chosen them and conferred power upon them. "Responsible government" in the Western democracies means either the responsibility of the executive to the legislature or the responsibility of both to the electorate. In the new Germany, the electorate and the party are responsible to *Der Führer*. Since men are unequally endowed, and since all human organiza-

<sup>43</sup> Cf. *M.K.*, pp. 85, 89, 99, 296-305, 649-662.

<sup>44</sup> *M.K.*, p. 501: "Der Grundsatz, der das preussische Heer seinerzeit zum wundervollsten Instrument des deutschen Volkes machte, hat in übertragenem Sinne dereinst der Grundsatz des Aufbaues unserer ganzen Staatsauffassung zu sein: Autorität jedes Führers nach unten und Verantwortlichkeit nach oben."

tions are pyramids of power, the conceptions of mass participation in government and of government by numerical majorities are deemed to be obviously absurd and contrary to "natural law."<sup>45</sup> The first task of the National Socialist revolution was the liquidation of this dangerous heresy.<sup>46</sup> Constitutional forms are of no importance. What is important is the *Führerprinzip*, the rôle of personal leadership, the concentration of responsibility in the hands of the few, the exercise of power by a new élite.

This élite is answerable to the dictator. And the dictator is answerable only to God—and to the people. His relationship to God remains as nebulous as was that of the divine-right monarchs of old. His relationship to the people has not yet been defined with complete clarity in Nazi theory and practice. In 1926, Goebbels could say: "The great leader will not be elected. He is there when he must be there!"<sup>47</sup> In 1933, Hitler insisted that he held power by a broad popular mandate.<sup>48</sup> The election of November 12, 1933, was ordered for the announced purpose of convincing the world of this fact. The "yes-no" referendum on foreign policy appears, in principle, to be contrary to Hitler's original dictum that the leader,

<sup>45</sup> Thus, Hitler's closing address to the Nürnberg party convention of 1933: "Dass aller Menschen in einer Nation fähig wären, einen Hof oder eine Fabrik zu verwalten oder deren Verwaltung zu bestimmen, wird bestritten. Allein, dass sie alle fähig sind, den Staat zu verwalten oder dessen Verwaltung zu bestimmen, wird im Namen der Demokratie feierlichst attestiert. Es ist dies ein Widerspruch in sich. Entweder die Menschen sind infolge gleicher Fähigkeit in der Lage, alle gleich einen Staat zu verwalten, dann ist die Aufrechterhaltung des Eigentumsgedankens nicht nur ein Unrecht, sondern einfach eine Dummheit. Oder die Menschen sind wirklich nicht in der Lage, das gesamtgeschaffene materielle und kulturelle Gut einer Nation als gemeinsames Eigentum in gemeinsame Verwaltung zu nehmen, dann sind sie noch viel weniger in der Lage, den Staat gemeinsam zu regieren!" (*Völkischer Beobachter*, Sept. 5, 1933).

<sup>46</sup> Minister-President Göring in his address of September 15, 1933, declared: "Im alten Parlament galten Autorität und Verantwortung im umgekehrten Sinne. Die Verantwortung ging von oben nach unten und die Autorität ging von unten nach oben. Das war die Sünde wider ein Naturgesetz und daran musste er langsam aber sicher zerbrechen. Hier aber gilt das alte Prinzip: Die Autorität geht von oben nach unten, die Verantwortung aber immer von unten nach oben. Verantwortlich sind Sie dem Nächsten, der über Ihnen zu stehen berufen ist. Die letzte Verantwortung trägt der Führer, und er trägt sie vor seinem Gott und seinem Volk." (*Völkischer Beobachter*, Sept. 16, 1933).

<sup>47</sup> *Die Zweite Revolution*, p. 5.

<sup>48</sup> In the election of March 5, 1933, the NSDAP secured less than 44 per cent of the total votes cast. The Hitler cabinet, however, was supported by Hugenberg's Nationalists and the 288 Nazi deputies secured a majority in the Reichstag of 647 members through the arrest of the 81 Communist representatives.

once elected, assumes full responsibility for his acts without regard to majorities. The Reichstag ballot however, was prepared in accordance with sound Nazi doctrine: the voter could do nothing save approve the Nazi list or invalidate his ballot. But these logical discrepancies offer no difficulty to the convinced National Socialist. He accepts unreservedly Treitschke's "great man" theory of history. Italian Fascist doctrine asserts: "Mussolini is always right." The good citizen in the Third Reich subscribes to a similar principle: "*Hiller hat immer recht!*"<sup>49</sup> Propaganda is more important than violence in securing popular acquiescence in the new dispensation. Strenuous efforts have been made to indoctrinate the entire population with the new political faith. In the minds of the masses, the symbols and slogans of the NSDAP have already been identified with the integrity and well-being of the nation. This work of political education began years before the Nazis attained power and was in fact the chief secret of their electoral successes. Since March, 1933, all other propagandas have been suppressed and every conceivable agency of public enlightenment has been utilized to build up the verbal associations and emotional responses which will ensure the perpetuation of the Fascist régime. The Nazi leaders long ago learned to appreciate the supreme importance of this work of psychological preparation. The necessity of incessant propaganda is now an article of faith with the new rulers. Gigantic mass demonstrations and solemn political rituals represent only a phase of this work. Through the Ministry of Enlightenment and Propaganda, and through an elaborate mechanism of censorship, subsidies, and social pressures, the task of holding the loyalty of the masses is entrusted to the press, the radio, the theater, the cinema, the church, and the school. The rising generation, from kindergarten to university, is treated to a curriculum in which physical training, political indoctrination, and moral education are given definite precedence over the imparting of knowledge. The objective is not the conversion of a majority of the population (this has long since been achieved), but unanimous and unquestioning con-

<sup>49</sup> M. A. Schlitter, "Wirtschaftsbegriffe und ihre Problematik," *Hochschule für Politik der NSDAP*, p. 132. Cf. Göring to the Prussian *Staatsrat*, September 15, 1933: "Über allem, meine Herren, und über alle Auffassungen hinaus steht für die Nationalsozialisten eins: die Treue zum Führer. Was der Führer will, wird getan. Sein Wille ist uns Gesetz, und so geschieht es, aber nicht erzwungenermassen, sondern in freudiger Bejahung dieses Grundsatzes: der Schaffung eines einigen Reichen, der Schaffung der Geschlossenheit des Volkes."

formity to the new creed. This unanimity, obtained by a combination of high-pressure propaganda, suppression of organized opposition, and intimidation of individual dissenters, was strikingly demonstrated in the election of November 12, 1933.<sup>50</sup>

As apostles of *Realpolitik*, however, the rulers of the Third Reich have never neglected to emphasize the decisive rôle of force, in both internal and foreign politics. They envisage the state not only as an expression of a *Weltanschauung*, but as an embodiment of armed violence to be used against domestic and foreign foes. "Might is right" is sound Nazi doctrine.<sup>51</sup> Political power divorced from military force is regarded as a contradiction in terms.<sup>52</sup> Hitler, in his autobiography, takes the inevitability of war for granted.<sup>53</sup> So long as Germany remains disarmed among heavily armed neighbors, expediency dictates that saber-rattling shall be figurative only and shall be accompanied by repeated assurances of peaceful intent. But, woven into the warp and woof of the political doctrine of German Fascism are the heroic military traditions of the Prussian past, the legend of German invincibility in war, the *Heldentum* ideal of knights in armor, and the deepest deference toward the vocation of the soldier. The Nazi government leaves to foreign observers the academic task of debating whether these things constitute "militarism." For its own part, it is content to profess peace and, at the

<sup>50</sup> Of the 45,146,277 qualified voters, 43,460,529 (96.3 per cent) participated in the referendum, and 42,995,718 (95.2 per cent) participated in the Reichstag balloting. Of the former, 40,609,243 (93.5 per cent) voted "Yes"; of the latter, 39,646,273 (92.1 per cent) voted for the Nazi list. On the Nazi conception of education, cf. *Prog.*, Pt. 20; *M.K.*, pp. 452-476; Ernst Krieck, *Nationalpolitische Erziehung* (Leipzig, 1933); Rudolf Buttmann, "Nationalsozialismus und Volksbildung," *Nationalsozialistisches Jahrbuch*, 1933, pp. 193-197; F. A. Beck, "Die pädagogische Problematik der Gegenwart als nationalpolitische Aufgabe," *Hochschule für Politik*, pp. 34-42.

<sup>51</sup> "Erst wenn Deutschland wieder eine Macht darstellt, wird es auch wieder zu seinem Recht kommen" (Goebbels, *ABC*, p. 7).

<sup>52</sup> Feder, *D.S.*, p. 29: "Ohne Macht kein Staat, ohne Autorität keine Regierung. Nichts ist selbstverständlicher . . . Macht ohne ein Machtinstrument ist undenkbbar; politische Macht und militärische Machtmittel bedingen sich gegenseitig so innig, wie sich Wirtschaft und Sittlichkeit nicht voneinander trennen lassen. Um verlorene Macht wiederzugewinnen, gibt es nur das einzige Mittel, ein militärisches Machtinstrument wieder zu schaffen."

<sup>53</sup> Cf. *M.K.* especially pp. 156f., 363-369, 684f., 708-725, etc. Cf. Feder, *D.S.*, p. 31, in speaking of the Dictator: "Zur Erringung seines Ziels darf er auch vor Blut und Krieg nicht zurückschrecken, er darf nicht ruhen und rasten, bis sein Ziel erreicht ist."

same time, to spare no effort to awaken martial enthusiasm among its subjects.<sup>54</sup>

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Such, in résumé, are the dominant political ideas of Fascist Germany. These ideas are less a product of the erudite elaboration of the theories of nineteenth-century thinkers than an expression of non-rational patriotic emotionalism prevalent in the post-war Reich. But since mass emotions are always verbalized in terms of word-patterns already current in a culture, it is but natural that discerning observers should perceive the roots of the Fascist doctrine deep in the German past. This ideational legacy has often been minimized by the Nazi spokesmen themselves, for they have found it good politics to present their creed as a *de novo* creation, born of mysterious revelations and Messianic visions. *Der Führer* himself has frequently said, in effect, "*L'idée, c'est moi!*" Being un-blessed with higher philosophical erudition, he did not consciously borrow his ideas from older sources. But he evolved them obviously out of feelings and word-patterns already widespread in central Europe. The Nazi dogma, like every dogma, has been fabricated out of materials already at hand. Neither the cleverness of the design nor the heaviness of the ornamentation can conceal the fact that the new temple has been built out of old wood.

The identity of the various pieces of lumber in the ideological "Brown House" of Hitlerism is clearly perceptible. (The creed of racial nationalism, with its emphasis on the unique superiority of German (Aryan) virtues, is perhaps the oldest component element in the new faith. Tacitus, in his *Germania*, was the unwitting founder of this creed. Frederick the Great and Bismarck contributed powerfully to its development by their words and deeds—and by the not-too-accurate recollection of their words and deeds which is now prevalent. The Aryan myth of Gobineau and Chamberlain has been merged with the German nationalist tradition of Fichte and Treitschke. Hegel's theory of history and his doctrine

<sup>54</sup> Oberst Heinrich Kirschheim, in "Die deutschen Heere von den germanischen Volksheeren bis zum Reichsheer," *Hochschule für Politik*, p. 122: "Vorbedingung für Erringung unserer Freiheit ist die Schaffung eines Heeres von angemessener Stärke. Vorbedingung dafür ist die Erweckung des Wehrwillens im Volke. Es muss wieder als Ehrenpflicht eines jeden Deutschen angesehen werden, zur Verteidigung der Heimat im Heere zu dienen, Pflicht eines jeden Deutschen ist es deshalb, die pazifistische Propaganda zu bekämpfen und dadurch den Kampf unseres Führers um Deutschlands Befreiung zu unterstützen."

of state absolutism have been blended with Nietzsche's fiery gospel of the Blonde Beast and the Superman. La Garde and Naumann contributed decades ago to the fusing of anti-Marxian socialism with the ethnocentric megalomania of the Pan-German League. Othmar Spann<sup>55</sup> and Oswald Spengler<sup>56</sup> are in part responsible for the economic and historical outlook of the NSDAP. The anti-democratic ideology of the party is as old as democracy and tyranny themselves.<sup>57</sup> The conceptions of occupational representation and of an economic parliament are likewise not new.<sup>58</sup> A somewhat old-fashioned Darwinism, a highly fashionable creed of neo-mercantilism, and an eternal military romanticism serve to complete the pattern of the Nazi *Weltanschauung*. Each element in the design is old. But the ensemble is new and resplendent in dazzling colors. Even the critical connoisseur who is unwilling to concede its merits as a piece of original political theorizing must at least grant that it is a work of sheer genius as a masterpiece of practical political psychology.

The direct influence of Italian Fascist theory on the German movement is perhaps less than is commonly supposed abroad. Hitler, to be sure, has taken Mussolini as his model and has borrowed the colored shirt, the Roman salute, and the legion standards of his *Sturmabteilung* battalions from *Fascismo*. But the obvious similarity of state forms and political ideas in Italy and Germany is due less to imitation than to similar sequences of causes and effects. In both countries, the frustration of national ambitions and the economic and psychic insecurities in the post-war position of the propertied classes created comparable social tensions and collective emotional maladjustments. Similar phenomena are observable in post-war Japan, with similar symptoms: fervent antipathy to Marxism, liberalism, pacifism, and internationalism.

<sup>55</sup> Cf. his *Der wahre Staat* (Leipzig, 1921), and *Gesellschaftslehre* (Leipzig, 1930).

<sup>56</sup> Spengler might be said to have predicted Hitlerism fifteen years ago in his *Untergang des Abendlandes*. Now, however, he sees in the Third Reich, not a manifestation of the revolt against reason, the embattled demagogery, and the cheap Napoleonism which he forecast for the twentieth-century world, but a noble expression of German grandeur and might. Cf. his *Jahre der Entscheidungen* (Munich, 1933).

<sup>57</sup> Most of the charges leveled by the Nazis against democracy can be found in B. E. Faguet's *The Cult of Incompetence* (1902). A comparison of Nazi doctrine with the ideas of Bodin, Bossuet, and Hobbes is also not uninteresting.

<sup>58</sup> Cf. Charles Benoist, *La crise de l'état moderne* (1897), and the voluminous literature of British guild socialism.

and equally fervent enthusiasm for belligerent nationalism, political absolutism, and military heroism. In Italy and Germany, other elements in the Occidental cultural context, e.g., Freemasonry and political Catholicism, have also been the scapegoats of the prevalent resentments. For obvious reasons, German anti-semitism and the Nordic cult have had no counterparts south of the Alps. In both movements, however, the Sorel-Pareto conception of an élite has constituted a convenient bridge between the Napoleonic ambitions of individual leaders and the syndicalist-socialist doctrines of the party followers.

(The prospects of survival of the Nazi ideology in Germany, like those of Italian Fascism and Japanese ultra-nationalism, are obviously bound up with the future of the social orders which these creeds boast of having saved from Bolshevism. No competitive ideology can engage in effective proselyting activities so long as all means of coercion and all agencies of propaganda are in the hands of the dominant orthodoxy. For the present, the new German cult, with its paraphernalia of symbols, rituals, hymns, sacred writings, saints, and martyrs, brings genuine solace to the troubled middle-class soul. Further economic disintegration or defeat in military adventures, however, would lead eventually to popular disillusionment and despair, produce new insecurities, maladjustments, and tensions, and possibly create a new revolutionary situation. In such an event, the appeal of communism to the masses might well be enhanced by the fact that the dictatorship is constantly increasing the attention-value of revolutionary Marxism by utilizing it incessantly in its propaganda as the Devil incarnate from whom it claims to have rescued its subjects. Should the rescuers at some future time become the scapegoats of popular resentments engendered by economic or military catastrophe, the Marxist devil might easily be welcomed back as a savior. This circumstance renders it possible, but scarcely probable, that the dictators will be induced to refrain from carrying their cult of war-heroism to its logical conclusion. Meanwhile, Fascist power and Fascist ideology are securely in the saddle in Germany—at least until the next chapter of Armageddon.

## AMERICAN GOVERNMENT AND POLITICS

**States versus Nation, and the Supreme Court.** The Supreme Court of the United States has been as impartial an umpire in national-state disputes as one of the members of two contending teams could be expected to be. This is not to impugn the wisdom or the fairness of the Supreme Court, but it is to say that the Supreme Court has been partial to the national government during the past one hundred and forty-four years of our experience with a federal system in the United States. The states, as members of the federal system, have had to play against the umpire as well as against the national government itself. The combination has long been too much for them.

When I speak of the Supreme Court as an umpire of the federal system, I do not refer to its rôle in enforcing constitutional limitations upon legislative power, such, for example, as those to be found in the Fourteenth Amendment. Nor do I refer to the rôle which that court has played in increasing the scope of national power over individuals, as evidenced by its interpretation of congressional power over interstate and foreign commerce. I refer more particularly to the rôle which the Supreme Court plays in enforcing the legal and constitutional rules governing the mechanics of federalism—the rules governing the position in a federal system which the states occupy, or which the national government occupies. I have in mind the relations between the states and the national government as parts of a federal system, as parts of an organization of government.

There is a tendency for most of us to think of the distribution of governmental powers over individuals in a federal system, when we speak of the balance of power between the units of such a system, or a tendency to think of the increase of national power, whether that increase be at the expense of state power or not.

Recent congressional legislation has raised again the question of the proper distribution of the power to formulate governmental policies, in so far as those policies are formulated in legislation. The expansion of national power cannot be understood fully by a study of the legal materials alone. The non-legal materials of national-state relations, as well as of interstate relations, are receiving more attention now than formerly, and this is, of course, as it should be. Such an increase of attention to the non-legal materials of federalism is a necessary supplement to the adequate attention which for years has been paid to the legal materials on that subject. The one set of materials does not displace the other. Both are equally necessary to an understanding of inter-governmental relations under a federal system.

It is perfectly explicable that governmental powers of a legislative na-

ture should have been discussed so much recently, and it is equally explicable that the shifts which have been taking place in those powers should be engaging the attention of lawyers and political scientists. Discussions of power, or of shifts of power, cannot, however, be divorced entirely from the rules applicable to structure, and to the legal relations between the parts of the structure, as parts. It is with the Supreme Court as an umpire between the units of the federal system, the states on the one side and the national government on the other, that these observations will deal.

The materials of this study are familiar to most students of American government and constitutional law. Their arrangement in the particular pattern here presented, and the implications of, or generalizations from, them may prove sufficiently suggestive to warrant their discussion in this form. It is the conclusion of the author that the same tendencies are visible in the Supreme Court cases dealing with the relations between the states and the national government as units in the federal system that are discernible in the cases involving the division of governmental powers between those units. The two groups of cases give evidence of the tendency of the Supreme Court to favor centralization—give evidence of the trend towards unitary government.

The most vital and fundamental of the disputes between the states and the national government was not settled by the Supreme Court in the first instance, but was decided by resort to arms. In *Texas v. White*,<sup>1</sup> however, the court put the stamp of its approval upon the action of the victor, as it must of necessity have done in any event, and decided that the Confederate states had never been out of the Union, despite their membership in the Confederacy. Congress and the President had acted upon the assumption that the states were out of the Union, but the Supreme Court followed the dictates of constitutional logic, rather than those of events, and said that the Union was indestructible, so far as the actions of the disgruntled members were concerned, and that once the states had come into the Union, they could not leave it. The only way in which the dissenting states could have made good their claims would have been to win the war. This the Supreme Court would have recognized. *Texas v. White* represented the constitutional phase of the victory gained by the central government as a result of the outcome of the Civil War. It was an important victory.

Many years later, the states won a small point, however, when in *Coyle v. Smith*<sup>2</sup> they were held to be free to manage their own internal political affairs, irrespective of conditions imposed upon them by Congress as the price of admission into the Union. In that case, Oklahoma was held to have the power to change the location of its capital, although it

<sup>1</sup> 7 Wall. 700 (1868).

<sup>2</sup> 231 U.S. 559 (1911).

tions. This must have contributed much to the strictly legal tone of some of the decisions of the Supreme Court upon fundamental constitutional and political issues. It must have contributed much also to the losing game which the states have found themselves playing, and there can be no question that the political instrument of judicial review has been rendered ineffective to a large extent so far as the federal system is concerned. The states gain a little, now and then, from this ineffectiveness, but the national government gains as much, or more.<sup>8</sup>

*Chisholm v. Georgia*<sup>9</sup> is interesting at this point because it reflects the early attitude of the Supreme Court toward the states, so far as their position before that court was concerned in matters of jurisdiction; and while the decision was overcome by the Eleventh Amendment,<sup>10</sup> it is surprising that the amendment accomplished as little as it did. *Chisholm v. Georgia* held that a citizen of one state could sue another state in the Supreme Court. The Eleventh Amendment forbids the federal courts to take jurisdiction over such cases. At the outset the states won a rather substantial victory by persuading the Supreme Court that the "spirit" of the amendment was such that it should be interpreted to forbid the federal courts to take suits against a state by one of the defendant's own citizens.<sup>11</sup> But this application of the spirit of the amendment, directly at variance with the wording of it, was soon turned against the states, it being held that the spirit of the amendment was to give the states immunity from suit; and of course an immunity can be waived, so that if a state consents to be sued in the federal courts, those courts may take jurisdiction over the suit. The amendment in terms limits the jurisdiction of the federal courts so that they cannot take such cases, but the amendment being interpreted in terms of immunity permits such cases to be tried in the federal courts. And, once the consent to suit has been given, it cannot be withdrawn so far as that case is concerned.<sup>12</sup> A state may

<sup>8</sup> This phase of judicial review is discussed in greater detail by the writer in a forthcoming book on the effect of an unconstitutional statute. Attorneys-general may appear in private cases, but often do not ask leave to intervene.

<sup>9</sup> 2 Dallas, 419 (1793).

<sup>10</sup> Due to the emphasis later given to the phraseology of this amendment, it is reproduced here for reference. "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

<sup>11</sup> *Hans v. Louisiana*, 134 U.S. 1 (1890).

<sup>12</sup> *Gunter v. Atlantic Coast Line Railroad Co.*, 200 U.S. 273 (1906): "Although a state may not be sued without its consent, such immunity is a privilege which may be waived, and hence, where a state voluntarily becomes a party to a cause and submits its rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act by invoking the prohibition of the Eleventh Amendment."

consent to be sued in its own courts, of course, but there such consent may be withdrawn, even though the suit itself has begun,<sup>13</sup> but not so in the federal courts. State courts may not take suits against the United States without the latter's consent,<sup>14</sup> but although no case seems as yet to have raised the question, it is likely that federal consent to suit in the state courts can be withdrawn at any time.

Some interesting cases have been decided in favor of the federal courts when disputes between the state courts and the federal courts have arisen. For example, the national courts may release a party who is in the custody of a state officer, if proper showings justifying the issuance of the writ of habeas corpus are made.<sup>15</sup> The state courts may not interfere by habeas corpus with the work of federal officers or courts.<sup>16</sup> The federal courts are careful to say that they will interfere only upon great provocation, but the fact remains that they do interfere, in a manner not permitted to the states to interfere with federal officers. Federal officers may surrender a person in their custody to the state courts if they wish to do so, but such a surrender is a matter of comity, and not one of legal obligation.<sup>17</sup>

The federal courts may enjoin state courts from proceeding with a case, and have done so occasionally,<sup>18</sup> but the state courts dare not enjoin the federal courts in their work.<sup>18a</sup> Federal courts constantly interfere with state administrative officers by injunction,<sup>19</sup> but how often do the state courts step in to call a halt on any federal administrative action? Congressional attempts to curtail federal injunctive interference with state administration have been so restricted in application by the courts that they have been relatively ineffective.<sup>20</sup>

Diversity of citizenship cases may be removed from state to federal courts by virtue of congressional statute, and removals of this kind are legion because of the broad construction given this statute.<sup>21</sup> State attempts to curb removals by corporations in diversity cases have met with

<sup>13</sup> Beers v. Arkansas, 20 Howard, 527 (1858); Railway Company v. Tennessee, 101 U.S. 357 (1879).

<sup>14</sup> Stanley v. Schwalby, 162 U.S. 255 (1896); may not try title of federal government to land.

<sup>15</sup> Moore v. Dempsey, 261 U.S. 86 (1923). The constitutionality of the federal statute permitting this was sustained in Frank v. Mangum, 237 U.S. 209 (1914).

<sup>16</sup> Tarble's Case, 13 Wallace, 397 (1872); state courts may not issue writ to federal military officer to test legality of enlistment.

<sup>17</sup> Pomi v. Fessenden, 258 U.S. 254 (1922).

<sup>18</sup> United States Code (1926), Title 28, sec. 379, forbids such injunctions to issue except in bankruptcy cases.

<sup>18a</sup> Rigg, v. Johnson County, 6 Wallace, 166 (1867).

<sup>19</sup> The instances of interference are legion in the field of public utility regulation and in taxation.

<sup>20</sup> See the fate of the "Three Judge Rule" of United States Code (1926), Title 28, secs. 380-89, as described in 38 *Yale L. Jour.* 955.

<sup>21</sup> An important case on removal is Gaines v. Fuentes, 92 U.S. 10 (1875). The technical law on removal, mostly district court law in fact, is in hopeless confusion.

Supreme Court rebuffs and have proved futile.<sup>22</sup> Federal statutes also provide for the removal of criminal prosecutions against federal officers in the state courts to the federal courts, and such removals have been held to be constitutional.<sup>23</sup>

In the matter of the law to be used in the federal courts, the states have won a slender victory indeed. Federal statutes provide that the procedure in the federal courts shall be in conformity with that in the state courts, so far as that is practicable. How impracticable the federal courts have found it to conform their procedure to that of the states, those familiar with both groups of courts know only too well.<sup>24</sup> Similarly, another statute provides that the substantive law of the states is to be applied in diversity cases, but *Swift v. Tyson*<sup>25</sup> began a list of exceptions which has grown in length and breadth in the century elapsing since that decision was handed down.

The only consolation left to the states in the relations between the two judicial systems is that arising from the permission granted them by congressional statute to try cases involving federal questions, and that they not only may decide questions arising under the Constitution of the United States in some instances, but may decide them as matters of first impression if no federal precedent exists, and may even ignore such precedent when it exists, and evade compliance with the known rule of law for several years at a time.<sup>26</sup> But of course Supreme Court review substantially restricts the states in the long view, because of congressional statutes permitting that court to override state court decisions upon federal constitutional questions.<sup>27</sup> But here also, such questions are com-

<sup>22</sup> *Terral v. Burke Constr. Co.*, 257 U.S. 529 (1922).

<sup>23</sup> *Tennessee v. Davis*, 100 U.S. 257 (1879). See a recent case stating rules of pleading on such a removal, *Colorado v. Symes*, 286 U.S. 510 (1922).

<sup>24</sup> An ineffectiveness of the Conformity Act. See 36 *Yale L. Jour.* 853.

<sup>25</sup> 16 Peters, 1 (1842), holding that on matters of general commercial jurisprudence the federal courts determine for themselves the rule to follow. See the criticism of *Swift v. Tyson* in *Willoughby, Constitutional Law* (2d), secs. 836-37; 38 *Yale L. Jour.*, 88. A review of the general principles governing federal court application of state law is to be found in *Kuhn v. Fairmont Coal Co.*, 215 U.S. 349 (1910). More recent discussions of the question are to be found in *Concordia Insurance Co. v. School Dist.*, 282 U.S. 545 (1931); *Herron v. So. Pac. Co.*, 283 U.S. 383 (1931).

<sup>26</sup> It often takes several years before state practice is really changed to conform to Supreme Court decisions on state powers, partly because a decision that a statute of one state is invalid does not automatically or immediately strike down similar statutes in other states.

<sup>27</sup> It seems commonly to be overlooked that statute now provides for the appellate jurisdiction of the Supreme Court, and that a repeal of the statute would leave to the state courts final jurisdiction over questions of federal constitutional law arising in the state courts and not removed under the removal statutes. Appellate jurisdiction on this head is subject to "regulation" by Congress. Important early cases: *Cohens v. Virginia*, 6 Wheaton, 264 (1821); *Martin v. Hunter's Lessee*, 1 Wheaton, 304 (1816).

monly brought to the Supreme Court at the initiative of the aggrieved individual rather than at the instance of the governments involved.

Relations between the federal government and the state courts were involved in the interesting case of the second Employers' Liability Act, and the Supreme Court decided in the Second Employers' Liability Cases<sup>28</sup> that the state courts must accept cases arising under this act, even though the state courts did not wish to do so, and even though to do so might involve considerable expense and inconvenience to the state and its courts.

The states are under some constitutional obligations which must be performed if the Union is to continue, such, for example, as the duty to carry on elections for representatives and senators. No sanctions are provided for in case of failure, but military sanctions are perhaps available in instances of this kind, unless the failure to hold elections be so widespread as to constitute a dissolution of the Union itself. The duty involved in such a situation as the Second Employers' Liability Cases is more specific, however, and is a duty resting upon specific officers and branches of government.

The Supreme Court restricted its decision in the Second Employers' Liability Cases to the point involved, and simply held that so long as the state courts were open to suits of this kind arising in the states, they must be kept open to cases arising under the federal statute also. The case goes pretty far, but of course deals only with the duties of the judicial branch of state government, and then perhaps should be viewed in terms of discrimination against the federal cases, although the opinion is broader than this at some points.

Can Congress compel a state administrative officer to perform functions prescribed by federal statute? The question is naturally raised by this decision. It has been generally thought that the national government has no such power, and that to grant it this power would be to put the states at the mercy of the national government completely. State governments have often volunteered their aid to the central government, as for example, during the World War, when state governors acted as agents of the federal government in the execution of the draft acts.<sup>29</sup> State officers

<sup>28</sup> 226 U.S. 1 (1912).

<sup>29</sup> The Civil War acts seem to have been couched in more mandatory terms. See *In re Griner*, 16 Wis. 447 (1863); *Druecker v. Solomon*, 21 Wis. 628 (1867). State courts have divided over the question whether the state could aid the national government by condemning land for it. *Trombley v. Humphrey*, 23 Mich. 471 (1871), denying power; *Gilmer v. Lime Point*, 18 Cal. 229 (1861). See *Gilbert v. Minnesota*, 254 U.S. 325 (1920), that state may aid in carrying out national war policies. Also *Houston v. Moore*, 5 Wheaton, 1 (1920), state statute punishing refusal to obey President's order valid. *Robertson v. Baldwin*, 165 U.S. 275 (1897), held that federal statute valid which gave state justice of peace power to issue warrant of arrest.

have at times received commissions from the national government to act as agents of the latter government.<sup>30</sup> But apparently the issue has never been squarely presented to the Supreme Court as to whether state officers can be compelled against their own, and against the state government's will, to carry on federal work.

An oft-repeated view of the duties of state officers toward the Constitution of the United States is that all state officers are under duty to enforce the provisions of that document because of the oath which they take to do so, and that this means that to some extent state officers must perform federal functions. The flaw in this reasoning consists in viewing the oath as a grant of power, when it is merely a qualification for office. The reason why the oath is required is to make certain of the loyalty of the officers of government to the Constitution. To take an oath to support the Constitution against enemies threatening with destruction the system which it establishes is quite a different thing from taking the oath to obtain affirmative grants of power to carry on federal work. The word "support" should be interpreted to mean "defend" and "adhere to," rather than to do the work of the national government. Any other view would make it possible to place the burden of administering federal laws on the states.

State regulation of federal officers in the interests of safety and health have met with severe rebuffs. Headlight specifications for automobiles have been held inapplicable to mail trucks when the postmaster-general prescribed that another type would suffice.<sup>31</sup> Anti-oleomargarine laws do not apply to federal institutions in a state, such as a soldiers' home, if under federal authority rules governing foodstuffs in such a home are contrary to the state law.<sup>32</sup> Speed laws have been held not to apply to a member of the military department in the execution of orders from his military superiors<sup>33</sup> requiring speedy delivery. City and state police radio services are subject to the restrictions imposed by the federal Radio Com-

for deserting seaman. See, for general discussion, "State Administration of Federal Laws," 48 *L.R.A.*, 33; Chamberlain, "Enforcement of Volstead Act Through State Agencies," 10 *A.B.A.Jour.*, 391; 1 Willoughby, *Constitutional Law* (2d ed), 209. See discussion in Willoughby of United States Code (1926), sec. 78, placing duty on clerk of state court to prepare copies of papers in removal cases.

<sup>30</sup> Game wardens have occasionally been commissioned by both state and national governments. Some interesting material on the place of the states is to be found in Holcombe, "The States as Agents of the Nation," 1 *Southwestern Political Science Quarterly*, 307.

<sup>31</sup> *Ex parte Willman*, 277 Fed. 819 (D.C. Ohio, 1921).

<sup>32</sup> *Ohio v. Thomas*, 173 U.S. 276 (1898); state game laws held not to apply to federal officers on national forest reservation. *Hunt v. United States*, 278 U.S. 96 (1928).

<sup>33</sup> *State v. Burton*, 41 R.I. 1 (1918), the court saying that in the absence of military urgency the ordinary traffic rules would apply to federal officers.

mission, and the ease with which such control was imposed indicates how well-established the idea of federal supremacy has become. Ordinary police measures of the state or municipality are observed by federal officers, but when a test comes, federal authority overrides the state's exercise of its police power—a power that presumably is exercised for the protection of the population of the state. Drivers' license laws have been held inapplicable to mail-truck operators.<sup>33a</sup>

Perhaps the abject constitutional position of the states is nowhere more clearly illustrated than in the field of eminent domain. In *Utah Power and Light Company v. United States*,<sup>34</sup> the Supreme Court rebuked the state when it attempted to authorize the exercise of the power of eminent domain on federal lands located in the state. Consider, on the other hand, the city, a political subdivision of the state, which had a number of its streets condemned by the national authorities for military purposes.<sup>35</sup> Then there is the instance in which a public utility company, acting under federal authority, was permitted to construct a dam which would flood an area including several municipalities and cut the county into several distinct parts, each remote and inaccessible from the others.<sup>36</sup> A great deal of taxable property, also, was removed from the tax rolls by this action. Dicta in federal cases fully justify the assumption that these doctrines enunciated in the above-mentioned decisions will be extended still farther, and that the national government may take for its own use property belonging to or used by the state governments.<sup>37</sup>

Decisions in the field of federal-state relations in taxation are doubly interesting now, with many municipalities considering public ownership of public utilities, and states deliberating over the question whether liquor shall be dispensed privately or publicly. The supremacy of the national government in case of conflict between it and the states in the exercise of the power to tax, admittedly possessed by both of them, is nicely illustrated by the decision holding that if property subject to taxation by both of them is insufficient to pay both claims, it shall be sold for federal taxes

<sup>33a</sup> *Johnson v. Maryland*, 254 U.S. 51 (1920).

<sup>34</sup> 243 U.S. 389 (1917).

<sup>35</sup> *Nahant v. United States*, 136 Fed. 273 (C.C.A. 1st, 1905); *Same*, 153 Fed. 520 (C.C.A. 1st, 1907); *Bradford v. United States*, 23 F. (2d) 453 (C.C.A. 1st, 1927).

<sup>36</sup> *Missouri ex rel. Camden County v. Union Elec. Light and Power Co.*, 42 F. (2d) 692 (D.C. Mo., 1930).

<sup>37</sup> J. Willoughby, *Constitutional Law* (2 ed.), 179-180. It used to be thought that land in a state could not be taken without the consent of the state, but it is now established that the power of the federal government to take land by condemnation is not restricted to the consent provision governing purchase. Art. I, sec. 8, cl. 3. See *Kohl v. United States*, 91 U.S. 367 (1876); *Van Brocklin v. Tennessee*, 117 U.S. 151 (1886).

first, and if anything remains when they are paid, the remainder will go to the state.<sup>38</sup>

One of the decisions causing a great deal of speculation at the present time is *South Carolina v. United States*,<sup>39</sup> wherein a federal tax was upheld although applied to income received by the state from the sale of liquor under a liquor monopoly. Utilities owned by municipalities have recently paid similar taxes to the federal government, along with privately owned utilities. The rule customarily applied to exempt the instrumentalities of one government from taxation by the other government is not applied in these cases because the work carried on is said to be not "governmental" but private, and therefore not within the exemption. Does anyone suppose that the Post Office could be subjected to taxation by the states merely because in its operation the national government showed a net profit? Or would the states be permitted to tax any government-owned federal corporation unless federal statutes expressly permitted it?<sup>40</sup> Would a liquor dispensary owned by the national government be subjected to a South Carolina tax? One can almost hear the Supreme Court say gravely that all business conducted by the national government is "governmental" and therefore immune from state taxation. Ordinary private enterprise carried on by state governments or city governments is taxable, because the federal revenue cannot be defeated by state socialism, while when operated by the federal government it is likely to be for the "general welfare" and to tax it would be to endanger the very foundations of the federal system.

A state may not tax the franchise of a corporation authorized by Congress.<sup>41</sup> "To tax it is not only derogatory to the dignity but subversive of the powers of the government, and repugnant to its paramount sovereignty."<sup>42</sup> But in *Flint v. Stone Tracy Company*,<sup>43</sup> a federal tax was upheld though it was based on a value including that of a franchise of the

<sup>38</sup> See *Spokane County v. United States*, 279 U.S. 80 (1929).

<sup>39</sup> 199 U.S. 437 (1905). The whole subject of federal-state relations and the implications of the South Carolina case are discussed in Cohen and Dayton, "Federal Taxation of State Activities," 34 *Yale L. Jour.*, 704. See *North Dakota v. Olson*, 33 F. (2d) 848 (C.C.A. 8th, 1929), holding State Bank of North Dakota liable for tax on capital stock.

<sup>40</sup> *Clallam County v. United States*, 263 U.S. 341 (1923); *United States Spruce Corporation* not taxable by state. The case distinguishes the private profit type of corporation. Shares of stock in a national bank are taxable by virtue of an act of Congress permitting state taxation.

<sup>41</sup> *California v. Central Pac. R.R.*, 127 U.S. 1 (1888). But if a private profit organization, the property of the corporation is subject to state taxation. *Railroad Company v. Peniston*, 18 Wall. 5 (1873).

<sup>42</sup> *California v. Central Pac. R.R.*, note 41, *supra*.

<sup>43</sup> 220 U.S. 107 (1911).

corporation which had been granted by the state. The national tax on state bank notes was sustained on the theory that the power exercised was not a tax power as such, but a tax power as an instrumentality for the execution of the power over currency.<sup>44</sup> The result, of course, was to check the note issues of state banks. The fate which befell earlier attempts by the states to tax national bank-note issues is remembered by all who have read *McCulloch v. Maryland*.<sup>45</sup> In one case, the tax was invalid because destructive; in the other, valid because destructive. National bank stock is taxable by the states because a congressional statute permits such taxation.<sup>46</sup>

Congressional power over imports and foreign commerce extends to the power to tax imports, and this power has been held to be so broad as to extend to goods imported by a state agency.<sup>47</sup> It is difficult to imagine the Supreme Court sustaining a state tax on the sale of an article to the Post-Office Department.<sup>48</sup>

The Supreme Court has perhaps umpired fairly, but it certainly has not umpired impartially. The traditional explanation of the division of powers in the United States has always been that the national government is sovereign in its sphere, the state government sovereign in its sphere. The powers are said to be divided between the two governments, and together they possess the power of government in this country. But is the state sovereign, or supreme, in its own sphere? The rule is that the national powers are supreme if they come into conflict with state powers. This is a rule of subordination, not a rule of equality.

Gradually, but steadily, the national government has come to occupy a favored position in the federal system, and the balance contemplated by the constitutional fathers has been changed to dominance of the national government. The Supreme Court has both led and been led in this development. It has heeded not only military victories such as those of the Civil War, but also the more insistent social and economic demands of the people that the national government assume an increasingly important rôle.

This increase in federal power, and this place of dominance of the national government in the federal system, has been aided by the Supreme Court. For the time being, such changes do not necessarily mean that the

<sup>44</sup> *Veazie Bank v. Fenno*, 8 Wallace, 533 (1869).

<sup>45</sup> 4 Wheaton, 316 (1819). Federal Land Bank mortgages are exempt. *Federal Land Bank v. Crossland*, 261 U.S. 374 (1923).

<sup>46</sup> See Rev. Stats. Sec. 5219. The constitutionality of such permission has never been settled, having been assumed rather than decided.

<sup>47</sup> *Board of Trustees of Univ. of Ill. v. United States*, 53 Sup. Ct. Rep. 509 (1933).

<sup>48</sup> See the comments in *Osborn v. Bank*, 9 Wheaton, 738 (1824), on state restrictions on contractor supplying goods to federal government.

states lose power, although they have already lost position, so far as the federal system is concerned.

The constitutional character of the Union has changed greatly since 1789. One wonders whether it is not time now to restate the rule on express and implied and delegated powers. Is it not much easier to predict decisions, in all but the labor field, by assuming the present rule governing federal exercise of governmental power to be as follows: "The national government has all those powers of government not specifically denied it. In case of doubt, the national government shall be deemed to have the power. In case of conflict between national and state power, the national government shall be deemed superior. In case of war or emergency, these rules apply particularly, but in case of doubt a state of emergency shall be deemed to exist?"

If the next few years should bring about the necessity for such a formulation, they would only be bringing about in the field of governmental powers a shift which has been nearly completed in the rules applied to the relations between the national government and the states as constituent parts of the federal system.

One cannot but ponder how perfectly the Supreme Court has paved the way for any changes of government which may be contemplated necessitating organization on a national scale; for, be it fascism or communism, the constitutional stage is set—only a step more here and there, and the legal doors are wide open. The Supreme Court has played the rôle that a political umpire should play, that of half a judge and half a governor. The result is comforting, even to those who would like to see the present system given a further trial.

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**State Constitutional Development Through Amendment in 1933.** Since this annual survey was inaugurated in 1927, it has been observed that activity in the amendment of constitutions is greater in even years than in odd years. Only eight states (California, Michigan, New Jersey, New York, Oregon, South Carolina, Virginia, and Wisconsin) changed their fundamental law in 1927. In 1928, the number rose to eighteen (Alabama, Arizona, Arkansas, Colorado, Florida, Idaho, Kansas, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, North Dakota, Pennsylvania, Rhode Island, Texas, and Virginia). The number was reduced to five in 1929 (Delaware, Maine, New York, Ohio, and Wisconsin), only to swell to a new height of twenty-one (Arizona, California, Florida, Idaho, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Washington, and Wisconsin).

sin) in 1930. The six states which featured in this respect in 1931 were Alabama, Kentucky, Maine, Michigan, New York, and Ohio. The record year was 1932, in which twenty-three states (Arizona, California, Colorado, Connecticut, Georgia, Idaho, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Texas, Utah, West Virginia, and Wisconsin) were listed. Constitutional changes in ten states in 1933 are reviewed by states rather than by subject-matter, and the effect of each amendment upon earlier constitutional provisions is indicated. A note is added concerning the amendment process in each state surveyed.

*Alabama.* Amendment XXIV suspends until October 1, 1935, section 281 of Article XVII which provides that "the salary, fees, or compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed," so that reductions in pay may be made. Furthermore, an upper limit of \$6,000 per annum for any state, county, or municipal officer is fixed, effective until October 1, 1935.<sup>1</sup> A state income tax with exemptions of \$1,500 for unmarried persons, \$3,000 for heads of families, and \$300 for each dependent under eighteen years of age, was adopted as Amendment XXII. No exemption is allowed state, county, and municipal officers and employees. Revenue derived from this tax is being held in trust for the payment of the floating debt of Alabama until all debts to October 1, 1932, are paid, and thereafter is to be used exclusively for the reduction of state ad valorem taxes.<sup>2</sup> Section 213 of Article XI is amended to provide for payment of outside and unpaid warrants on the state treasury and to prevent state deficits by restraining the state comptroller from drawing warrants for payment of money unless there are sufficient funds in the treasury to cover them.<sup>3</sup> In Article XVIII, the length of notice of proposed amendments to be voted upon by the people is reduced from eight to four weeks preceding the day appointed for the election.<sup>4</sup> Proposed amendments are read in the house in which they originate on three different days, subject to favorable vote of three-fifths of all the members elected to that house, whereupon a similar procedure is followed in the other house of the legislature. A majority of the qualified electors of the state must support the proposal at a special or general election, in this case on July 18, 1933.

*Arizona.* Section 22 of Article XXII provides for the use of lethal gas in the administration of the death penalty for criminals.<sup>5</sup> This amendment

<sup>1</sup> Yes, 130,058; No, 44,236.

<sup>2</sup> Yes, 107,202; No, 69,889.

<sup>3</sup> Yes, 103,200; No, 67,000.

<sup>4</sup> Yes, 113,943; No, 47,091.

<sup>5</sup> Yes, 11,999; No, 11,585.

was proposed by a majority of the members of the two houses and adopted by a majority of the voters participating in the election of October 3, 1933.

*Delaware.* To Section 4 of Article I is added a provision for New Castle county grand juries of fifteen members, one resident from each representative district in the county. An affirmative vote of nine of each of the fifteen is necessary to find a true bill of indictment. Grand juries of Kent and Sussex counties comprise ten members, one resident from each of the representative districts, an affirmative vote of seven being necessary to return a true bill of indictment. A special vote is necessary, amendments being adopted by a concurrence of two-thirds of the members of each house, with publication of the texts of the amendments in at least three newspapers in each county.

*New York.* An additional alternative method for the ascertainment of compensation to be made for private property in the city of New York when taken by the city for public use provides in an amendment to Section 7 of Article I that it may be done by a term of the supreme court consisting of one or more justices thereof without a jury.<sup>6</sup> A state highway in the forest preserve, from Indian Lake to Speculator, was authorized through the addition of section 7-a to Article VII.<sup>7</sup> Barge canal lands in New York City, no longer needed, may be disposed of by the legislature in exception to section 8 of Article VII, the proceeds to be applied to the improvement or maintenance of the barge canal system.<sup>8</sup> These amendments were approved by a majority of each of the two houses in successive legislatures and subsequently ratified by a majority of the electors voting thereon in the November election.

*Ohio.* Article XV, section 9, prohibiting the sale and manufacture for sale of intoxicating liquors as a beverage was repealed.<sup>9</sup> Section 2 of Article XII was amended so that no property may be taxed in excess of one per cent of its true value in money for state or local purposes. The previous limit was one and one-half per cent.<sup>10</sup> Extensive changes are made in the provision for the organization and government of counties by repealing section 16 of Article IV and sections 1 to 7 of Article X, substituting therefor sections 1 to 4 in Article X. This "county home rule amendment" authorizes "any county to frame, adopt, or amend a charter and establish its form of government; permits the legislature to enact plans of county government subject to adoption by the electors in any county; provides for the transfer of the powers of townships and municipalities to the county, or for the withdrawal of such powers, by a vote of the people concerned; permits the adoption of a charter giving the county

<sup>6</sup> Yes, 1,113,371; No, 443,326.

<sup>8</sup> Yes, 1,109,388; No, 425,378.

<sup>10</sup> Yes, 979,061; No, 661,151.

<sup>7</sup> Yes, 1,099,399; No, 492,424.

<sup>9</sup> Yes, 1,250,923; No, 578,035.

concurrent or exclusive municipal powers, or making the county a consolidated municipality; provides for the choosing of a charter commission, by popular vote, and for the framing of a charter by such commission."<sup>11</sup> A majority of the electors voting on this proposal on November 7, 1933, concurred with three-fifths of each house of the legislature.

*Oklahoma.* The total taxes on an ad valorem basis, for all state, county, township, city, town, and school district purposes, are reduced from thirty-one and one-half mills on the dollar to fifteen mills on the dollar in any one year (Article X, section 9). No ad valorem tax shall be levied for state purposes, and the levies for other government units are redistributed.<sup>12</sup> Having been agreed to by a majority of all of the members elected to each of the two houses, the amendment subsequently received approval of a majority of all of the electors at the special election of August 15, 1933.

*Oregon.* In order to conclude the work of the World War veterans' state aid commission, which was established in 1921 to provide rehabilitation and early adjustment of the unequal losses suffered by the veterans during the World War, an amendment to Article XI-c was adopted immediately discontinuing the payment of cash bonuses and preventing the issuance of bonus loans after June 30, 1938. Refunding bonds may be issued within previous constitutional limitations.<sup>13</sup> Sections 36 and 36-a of Article I, prohibiting the sale and importation of intoxicating liquors, were repealed by initiative petition filed March 20, 1933 (alternative method to approval by a majority of all the members elected to each of the two houses of the legislature), and by final vote of the people in a special election of July 21, 1933.<sup>14</sup>

*Pennsylvania.* Of the twelve proposed changes, ten were adopted. An exception is made to the general restriction (Article III, section 18) that "no moneys shall be paid out of the treasury, except upon appropriations made by law, and on warrant by the proper officer in pursuance thereof," permitting the legislature to appropriate money for pensions or gratuities to blind persons twenty-one years of age and upwards.<sup>15</sup> Article III, section 22, is revised so that the general assembly now may prescribe the nature and kind of investments for trust to be made by executors, administrators, trustees, guardians, and other fiduciaries.<sup>16</sup> The tax qualification for voting in Article VIII, section 1, clause 4 (payment within two years of a state or county tax which shall have been assessed at least two months and paid at least one month before the election) is repealed.<sup>17</sup> Four new sections are added to Article IX. One, relating to a soldier's

<sup>11</sup> Yes, 846,594; No, 74,2925.

<sup>12</sup> Yes, 183,623; No, 20,739.

<sup>13</sup> Yes, 113,267; No, 75,476.

<sup>14</sup> Yes, 143,044; No, 72,745.

<sup>15</sup> Yes, 1,092,001; No, 355,405.

<sup>16</sup> Yes, 607-417; No, 460,055.

<sup>17</sup> Yes, 670,325; No, 466,136.

bonus, permits the state to create debt and issue bonds to the amount of fifty million dollars to pay compensation to certain veterans of the Spanish American War, the China relief expedition, the Philippine War, and the World War.<sup>18</sup> Another section authorizes the governor, auditor-general, and state treasurer to borrow not more than twenty-five million dollars to defray the expenses of the state government during the current biennium.<sup>19</sup> The city of Philadelphia is permitted to levy special assessments against such abutting or non-abutting properties as are or will be especially benefited by the construction or operation of transit subways, rapid transit railways, or other local transit facilities, and granting the city the power of eminent domain for such construction and operation.<sup>20</sup> Finally, by a close vote, the legislature is authorized to borrow ten million dollars for acquiring toll bridges.<sup>21</sup> For the immediate purpose of facilitating the creation of improved approaches in Philadelphia to the Philadelphia-Camden bridge, a new section is added to Article XV, permitting the general assembly to authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending, or re-locating of highways or streets connecting with bridges, crossing streams, or for tunnels under streams which form boundaries between Pennsylvania and any other state, and subsequently to sell or lease such part as is not actually required.<sup>22</sup> Consolidation of the city of Pittsburgh and Allegheny county may be authorized by the legislature under an amendment to Article XV, section 4.<sup>23</sup> Article XVII, concerning railways and canals, is amended (section 3) by eliminating the so-called long and short haul clause applicable to railroad rates.<sup>24</sup> The Pennsylvania constitution is amended by proposal of a majority of the members elected to each house—approved by a majority of the electors voting thereon in an election.

**Texas.** Four constitutional amendments were voted upon at the special election of August 26, 1933, details of which have not been made available at the time of this writing. They are, however, stated in the *General Laws* of the forty-third legislature. Prohibition of the manufacture, sale, barter, and exchange of spirituous, vinous, or malt liquors or medicated bitters capable of producing intoxication (Article XVI, section 20-a) is repealed.<sup>25</sup> The legislature is authorized to float bonds to relieve unemployment.<sup>26</sup> The home rule charter becomes available to certain counties.<sup>27</sup> A vote of two-thirds of all members elected to each house, together with a majority of the votes cast at an election, proposes amendments for the considera-

<sup>18</sup> Yes, 964,708; No, 580,794.

<sup>19</sup> Yes, 1,240,528; No, 349,862.

<sup>20</sup> Yes, 489,865; No, 444,934.

<sup>21</sup> Yes, 542,698; No, 541,106.

<sup>22</sup> Yes, 497,289; No, 493,048.

<sup>23</sup> Yes, 568,798; No, 467,492.

<sup>24</sup> Yes, 710,191; No, 331,224.

<sup>25</sup> Yes, 317,340; No, 186,315.

<sup>26</sup> Yes, 334,728; No, 162,073.

<sup>27</sup> Yes, 317,521; No, 131,827.

tion of the people in an election in which the majority of the votes cast must be favorable. A special election was held on August 26, 1933.

*Utah.* Section 8 is added to Article XVI, authorizing the legislature to establish a minimum wage for women and minors and to provide for the comfort, health, safety, and general welfare of any and all members.<sup>28</sup> Section 3 of Article XXII, prohibiting the manufacture, sale, storing, advertisement, use, and possession of or traffic in intoxicating liquors, is repealed.<sup>29</sup> These amendments, as approved by two-thirds of each house of the legislature, received the endorsement of the majority of the electors of the state on November 7, 1933.

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**Organization of the Executive Branch of the National Government of the United States. Changes between November 1, 1933, and March 15, 1934.** In the December, 1933, issue of the REVIEW (pp. 942-955) appeared a tabular view of the changes in major units of the national government between March 4 and November 1, 1933. The list below brings the enumeration to March 15, 1934. As in the previous list, mention is made only of units specifically authorized by law or established by the President by executive order under general authority vested in him. There are also boards, corporations, and committees subordinate or advisory to the units listed.

**Department of Agriculture**

Agricultural Adjustment Administration

Executive Order No. 6551 of January 8, 1934, transferred to National Recovery Administration specified functions and powers.

Extension Service

Reduction in payments for agricultural extension work 25 per cent by Executive Order No. 6166 of June 10, 1933. Executive Order No. 6585 of February 6, 1934, postponed effective date to April 10, 1934; Executive Order No. 6586 of same date revokes portion of Executive Order No. 6166 providing for this reduction.

Office of Experiment Stations

Reduction of payment for agricultural stations 25 per cent by Executive Order No. 6166 of June, 1933. Executive Order No. 6585 of February 6, 1934, postponed effective date to April 10, 1934; Executive Order No. 6586 of same date revokes portion of Executive Order No. 6166 providing for this reduction.

**Department of Commerce**

Bureau of Mines

<sup>28</sup> Yes, 133,771; No, 21,941.

<sup>29</sup> Yes, 99,943; No, 62,437.

Transferred to Department of the Interior (see below under Department of the Interior).

Federal Employment Stabilization Office

Created by Executive Order No. 6623 of March 1, 1934, effective May 1, 1934, to take place of Federal Employment Stabilization Board, an independent establishment. By Executive Order No. 6166 of June 10, 1933, effective August 10, 1933, the Board was abolished and its records transferred to the Federal Emergency Administration of Public Works; by Executive Order No. 6221 of July 26, 1933, the effective date was deferred until 60 days after convening of the second session of the 73rd Congress; by Executive Order No. 6624 of March 1, 1934, the effective date was deferred until May 1, 1934, when Order No. 6623 becomes effective.

Department of the Interior

Federal Board for Vocational Education

Reduction of payments for cooperative vocational education and rehabilitation 25 per cent by Executive Order No. 6166 of June 10, 1933. Executive Order No. 6585 of February 6, 1934, postponed effective date to April 10, 1934; Executive Order No. 6586 of same date revokes portion of Executive Order No. 6166 providing for this reduction.

Office of Education

Reduction of payments for endowment and maintenance of colleges for the benefit of agriculture and mechanic arts 25 per cent by Executive Order No. 6166 of June 10, 1933. Executive Order No. 6585 of February 6, 1934, postponed effective date to April 10, 1934; Executive Order No. 6586 of same date revoked portion of Executive Order No. 6166 providing for this reduction.

Bureau of Mines

Transferred from Department of Commerce by Executive Order No. 6611 of February 22, 1934, effective April 24, 1934. When the Bureau of Mines was created in 1910, it was placed in the Department of the Interior. President Coolidge, by Executive Order No. 4239 of June 4, 1925, effective July 1, 1925, transferred it to the Department of Commerce under authority of section 12 of the act of February 14, 1903 (32 Stat. L., 830) creating the Department of Commerce and Labor.

Department of Justice

Division of Investigation

Portion of former Bureau of Prohibition transferred to Bureau of Internal Revenue (see below under Treasury Department).

**Treasury Department****Division of Disbursement**

Executive Order No. 6540 of December 28, 1933, deferred to June 30, 1934, effective date of Executive Order No. 6166 of June 10, 1933, providing for centralization of disbursements, with proviso that consolidation might be made in whole or in part prior to June 30, 1934, by order of the Secretary of the Treasury, approved by the President. This consolidation has been made effective in part.

**Bureau of Internal Revenue**

Executive Order No. 6639 of March 10, 1934, effective May 10, 1934, abolishes the Bureau of Industrial Alcohol and Office of Commissioner of Industrial Alcohol and transfers all duties to Commissioner of Internal Revenue; the same order also transfers to the Commissioner of Internal Revenue the portion of the former Bureau of Prohibition (with certain exceptions) which Executive Order No. 6166 of June 10, 1933, effective August 10, 1933, transferred to the Division of Investigation of the Department of Justice. Executive Order No. 6166 of June 10, 1933, effective August 10, 1933, combined the Bureau of Internal Revenue and the Bureau of Industrial Alcohol to form the Division of Internal Revenue; the effective date of that order was postponed to December 31, 1933, by Executive Order No. 6224 of July 27, 1933, and was again postponed to June 30, 1934, by Executive Order No. 6540 of December 28, 1933. Executive Order No. 6639 of March 10, 1934, revokes the orders cited above, and therefore the Bureau of Internal Revenue retains its former name.

**War Department**

Transportation of air mail made duty of War Department "during the present emergency." Executive Order No. 6591 of February 9, 1934.

**Office of Quartermaster General**

National cemeteries and memorials in foreign countries transferred to American Battle Monuments Commission (see below under Independent establishments).

**Independent Establishments****Electric Home and Farm Authority, Inc.**

Created by Executive Order No. 6514 of December 19, 1933, to have "the powers and functions of a mortgage-loan company." The directors of this corporation are the directors of the Tennessee Valley Authority, and it is understood that it will be operated in connection with that organization.

**Export-Import Bank of Washington, D. C.**

Created by Executive Order No. 6581 of February 2, 1934, "to facilitate exports and imports and the exchange of commodities between the United States and other nations or the agencies or nationals thereof." It is understood that this corporation will confine its activities to trade with Russia.

**Second Export-Import Bank of Washington, D. C.**

Created by Executive Order No. 6638 of March 9, 1934, for the same purposes as the Export-Import Bank listed above. It is understood that the second bank will confine its activities to trade with Cuba.

**Federal Employment Stabilization Board**

Abolished and new office created (see above under Department of Commerce)

**National Recovery Review Board**

Created by Executive Order No. 6632 of March 7, 1934.

**American Battle Monuments Commission**

Administration of national cemeteries and memorials in Europe transferred from office of Quartermaster General, War Department, by Executive Order No. 6614 of February 26, 1934, effective April 28, 1934. By Executive Order No. 6166 of June 10, 1933, effective August 10, 1933, national cemeteries in foreign countries were transferred to State Department; by Executive Order No. 6228 of July 28, 1933, the transfer was postponed until further order.

**Federal Alcohol Control Administration**

Created by Executive Order No. 6474 of December 4, 1933. Membership increased and above-cited order amended by Executive Order No. 6576 of January 25, 1934.

**Federal Civil Works Administration**

Created by Executive Order No. 6420B of November 9, 1933. This administration is "an agency to administer a program of public works as a part of, and to be included in, the comprehensive program under preparation by the Federal Emergency Administration of Public Works." The Federal Emergency Relief Administrator is designated as head of the Federal Civil Works Administration.

**National Emergency Council**

Created by Executive Order No. 6433A of November 17, 1933, to coördinate the activities under the National Industrial Recovery Act (48 Stat. L., 195), the Agricultural Adjustment Act (48 Stat. L., 31), and the Federal Emergency Relief Act (48 Stat. L., 55). Members of Special Industrial Recovery Board

added to membership of National Emergency Council by Executive Order No. 6513 of December 18, 1933.

National Labor Board

Continued by Executive Order No. 6511 of December 16, 1933. No formal numbered Executive Order had been issued when the Board was created on August 5, 1933.

National Recovery Administration

Executive Order No. 6551 of January 8, 1934, transferred from Secretary of Agriculture specified functions and powers.

Public Works Emergency Housing Corporation

Designated by Executive Order No. 6470 of November 29, 1933, as agency for the construction, control, etc., of low-cost housing and slum clearance projects under section 202 (d) of Industrial Recovery Act of June 16, 1933 (38 Stat. L., 201).

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Political Meetings in the Chicago "Black Belt."<sup>1</sup> Political meetings constitute one of the means employed by the Negro political leaders in Chicago to develop and maintain party morale. The Republican rallies in the second and third wards are unique affairs, not to be duplicated in other parts of the city. The political meetings have taken over some of the patterns of religious revivals or camp meetings. A party gathering which is not packed and which does not stir up an emotional response is looked upon as very unusual. The audience is attentive, enthusiastic, patient, good natured, and content to sit for many hours on uncomfortable seats. When a speaker says something which strikes a popular chord, the listeners shout, clap, or wave programs, hats, or hands in the air. Politics is evidently something which is very close to their daily life and aspirations. They feel that their jobs, their freedom, their right to vote, their happiness, their very lives almost, are endangered unless their candidates win. At least that is what the speakers bring out, and the audience responds as if it sincerely believed it.

An appraisal of Negro political meetings is difficult to make because when one tries to examine the parts, the vital, exciting whole is lost sight of. Not all of the meetings are held in large halls; there are precinct meetings in homes, regional meetings for a group of precincts, and organization meetings in the party headquarters or some convenient hall. These meetings are usually well staged and provide for entertainment, instruction, and incentives to political action.

<sup>1</sup> This is part of a larger study of the Negro in Chicago politics to be published shortly. The author and assistants have made records of Negro political meetings for the past four years.

The entertainment features of a mass meeting are sometimes used to attract a crowd. Home talent is used extensively. In the intervals between speeches, bands, tap dancers, jazz orchestras, male quartettes, comedians, buglers, chorus girls, community choirs, and soloists may be brought in to vary the program. When a faction is weak or on the down-grade, professional entertainers may be employed to stem the tide. When the faction sponsoring a meeting is full of vigor, a few campaign ditties executed by school children are regarded as more in keeping with the occasion. The Democrats, and less frequently the Republicans, sometimes draw a crowd by issuing free coupons for a meeting. These are collected at the door, and during the meeting drawings are made from them by lot. Persons holding the lucky numbers receive money, hams, or some other valuable consideration.<sup>2</sup>

A skillful master of ceremonies at one of the Negro political meetings will arrange the order of speakers so that the tempo will be varied. One speaker may be crude in his language, unpolished in his style of delivery, but obviously sincere and forceful. Another may be gifted with words, skilled in voice inflexion, but lacking in drive and human understanding. A third may be learned in history, entertaining, a master of phrases, humorous, adroit at touching upon race foibles, but too obviously an actor. A fourth may be able to work himself into an emotional frenzy, to stir his audience profoundly, to recall vividly examples of race persecution. Still a fifth will exhibit an extraordinary smoothness, a pleasing quality of voice, a wonderful flow of language, a mastery of Bible history, law, and politics, and an ability to arouse his listeners as well. The chairman of a political meeting in the second or third wards has a great variety of oratorical talent to call upon, and he has himself to blame if the meeting is not a success.

The language used by the colored orators reflects the interests and habits of their listeners. Biblical and religious references are very common; even in the mouths of speakers known to be non-church goers. Ministers of the gospel are frequently included in the program of meetings, and are expected to introduce some of the atmosphere of a revival. In starting a political denunciation, one speaker gave as his text the first verse of the fifty-third chapter of Isaiah: "Cry aloud and spare not." Another modified a Biblical phrase in the following manner: "Father, forgive them for they are all messed up."<sup>3</sup>

The Negro's love of song is played upon cleverly. At a recent meeting, the opposition was ridiculed in the words of song titles. The speaker began by quoting, "You'll Understand it Better, Bye and Bye," and ended

<sup>2</sup> Report of political meetings held April 1, 1930, February 27, 1933.

<sup>3</sup> Report of political meetings held November 27, 1931, and April 3, 1932.

with the titles "I'll Be Glad When You're Dead, You Rascal You" and "That Was the Human Thing to Do."<sup>4</sup> References are made also to the gambling propensities of some of the voters. As one speaker put it, "I don't care if you play policy or not. If you think you can pick a gig or saddle, it is O.K. with me. You can spend your dimes and walk around broke while the boys ride around in their high-powered cars if you want to."<sup>5</sup> The responses of the audience in each of the cases given indicated that the speakers were treading upon familiar ground.

The appeals made at political meetings are fitted to the needs and aspirations of the group. A great deal of emphasis is placed upon the importance of political action with reference to jobs, public and private. The achievements of a given Republican organization in the past in winning jobs for Negroes was on one occasion pointed to with great pride.<sup>6</sup> The job-holders were warned that failure at the polls would mean the loss of their positions. In the case of a new and rising organization, appeals are made to the disappointed office-seekers and to those who have had hopes. Those who are candidates for legislative positions promise to protect the group against discriminatory measures, and those who seek to influence administrative officials through the party hierarchy promise to work for fair treatment in the schools, the courts, and the police stations.

Appeals to rational self-interest are not regarded as sufficient to stir the voters to action. A successful meeting introduced appeals to race consciousness, party loyalty, and civic pride. A masterful exhibition of this style of oratory was given in the campaign of November, 1930. So effective was the appeal that voting appeared to be lifted out of the realm of personal choice into the area of impersonal service for others. In part, one orator said: "You have done marvelous things in Illinois. Negroes who have been fighting these fetters against discrimination for fifty years can rise in a crisis like this and register interest in what is going on. This great advance is evidence that Negroes, though beaten down, will not stay beaten. The Negro has that everlasting spirit that rises. There has been an effort to break the spirit of the Negro. I can tell that the Negro spirit is far from being broken. The Negro with indomitable courage is still facing the rising sun. . . . You aren't going to vote against us. You aren't going to run from Negroes."<sup>7</sup> The applause that greeted these words

<sup>4</sup> Report of political meeting held April 9, 1932.

<sup>5</sup> Report of political meeting held February 17, 1933.

<sup>6</sup> "Forty years ago, when I came here, there were just a handful of Negroes in this organization. Eighteen hundred dollars was the largest salary any Negro received and there were scarcely a half dozen with jobs. From there we have come to the place where we have controlled 350 jobs with a pay roll up into the hundreds of thousands." Report of political meeting held November 20, 1931.

<sup>7</sup> Report of political meeting held October 31, 1930.

was deafening. While few colored orators are able to make so dramatic an appeal as this, the theme of race pride is an ever-recurring one at political rallies.

Much more difficult to dramatize is an appeal to civic pride. Judge Albert B. George, in the primary of 1930, pitched his campaign arguments at a high level. He said, in effect, that there were 150 colored lawyers in Chicago, and that as their representative on the bench it was up to him to make good in every way. He was often stopped on the street by people he did not know and was told that he had been very fair in some case before him, even though the speaker lost the case. He knew that a colored man on the bench in Chicago would have a hard time. His supporters knew that, too, and he was glad to say that the leaders had come to him before he took up his judicial duties and told him that they would not ask political favors of him and thus embarrass him.<sup>8</sup>

The treatment of abstract issues is only a part of the task of the Negro orator. The voters pass upon personalities as well as issues, and it is necessary for the organization to "sell" its candidates. The speakers must build up favorable pictures or stereotypes of their own organization candidates and unfavorable pictures of those of the opposition. Some of the spellbinders take their cue from ex-Mayor Thompson and try their skill at extravagant praise, sweeping claims, wild and preposterous charges, and reckless buffoonery. This style cannot be carried to an extreme, because audiences become skeptical, but within limits it can be used to reinforce characterizations that have a fair degree of probability.

The creation of favorable stereotypes is not always easy, as Negroes have shown a tendency to distrust their own leaders. To counteract this, one candidate will be pictured as a "fearless fighter," "a pioneer, rough but pure gold within," "a man of understanding, self-made and successful," "a loyal race man who is unpurchaseable," a man who "admits no inferiority" and who "has broken down social and economic barriers." Another candidate will be painted as a "man of intelligence," a "man who has known poverty and who has a large, generous heart," a statesman, and an experienced public servant who knows the value of tact. Still a third candidate may be pictured as the "popular churchman," the "well-known fraternal leader," the "man with a smiling face and a steel backbone." The qualities that seem to be appreciated by the voters are fearlessness in race matters, adroitness in coping with situations of importance to Negroes, and friendliness toward the masses.

The evolving of Negro political organization has made necessary the unification of various elements in the Negro group. Bitter factional quar-

<sup>8</sup> Political meeting, March 30, 1930.

rels have occurred during which unfavorable stereotypes were developed by rival leaders in a ruthless fashion. At political meetings the opposition candidates would be called "ignorant and inefficient," "despisers of religion," "dummy numskulls," "oxen in parlors," "grinning jackasses," "cowards," "traitors to the race," "double crossers," "job sellers," "licentious, crooked, lying hypocrites," "dirty Negroes with aversions to blacks," "white folks' niggers," "pussy-footing, hat-in-hand Uncle Toms," "handkerchief-headed Negroes," and "tools of the lily whites." These loaded epithets would not all apply to the same candidate, and some of them would be deemed so inappropriate that they would not be taken seriously. However, when a candidate's past record has some weak points the opposition is not slow to take advantage of them, provided, of course, that the opposition itself is not too vulnerable.

Many of the colored leaders have shown themselves masters of the technique of party propaganda. They have been sensitive to the currents of opinion in the Negro group and adroit in the manipulation of slogans and symbols. In their ability to play upon the sentiments, emotions, resentments, aspirations, and longings of the race lies part of the strength of the Negro political organizations.

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## LEGISLATIVE NOTES AND REVIEWS

Governors' Messages in 1934.<sup>1</sup> The gloomy utterances that so distinguished the 1933 messages of the governors have given way to statements of hope and confidence and even argumentative assertions of financial superiority. Governor Laffoon informs his legislature that Kentucky is in the best financial condition of any state in the Union. New York's Governor Lehman declares that the credit of the Empire State stands foremost among any in the United States. Governor Peery asserts that even though Virginia's bonds are outranked in sale value by those of one state, they command a better price than those of the federal government. Less imposing, but still interesting, is the affirmation in South Carolina that a budget has been balanced for the first time in many years, and in Mississippi that a credit at least "convalescent" has been attained.

*State Government.* Reorganization is urged in Kentucky, Mississippi, New Jersey, and Rhode Island. The outgoing Virginia governor suggests consolidation or abolition of certain bureaus and agencies. Legislative reapportionment is recommended in New York and Virginia. A new congressional redistricting act is also needed in the Old Dominion. The four-year-term-for-governor plea with elections in non-presidential years is repeated in New York. Governor Lehman also would empower the people to initiate constitutional amendments. Voting machines are requested in Rhode Island.

New Jersey's governor declares that the administration of justice from the highest to the lowest court, together with the county officers recording proceedings and executing findings, should be part of a state organization. Virginia's incoming governor deplores court delays, urges consolidation and rearrangement of judicial districts, and the outgoing governor asks substitution of trial justices for justices of the peace in those counties still having them.

A budget law broadened to include more of the features of an executive budget is asked in Mississippi. Rhode Island's Governor Green would abolish the office of commissioner of finance and create that of state budget director. The governor would be required to submit the budget and would be given power to veto items. It is proposed in New Jersey to centralize in a department of fiscal affairs the administration of the budget, the responsibility and authority to prescribe a system of accounts, general direction of the collection of state revenues, the making of state purchases, and the authorization of disbursements and commitments. The placing of all tax proceeds, except possibly road funds, in the general

<sup>1</sup> Published by courtesy of the American Legislators' Association. *Man. Ed.*

fund is urged in Kentucky. A fund for emergency expenditures is requested in Mississippi. The governor of the latter state impressed upon the legislature the necessity for providing revenue before making appropriations.

Partial restoration of pay cuts is asked by Governor Ely in Massachusetts and by outgoing Governor Pollard in Virginia. The latter also would empower the governor to decrease the number of employees and equalize salaries. The incoming Virginia governor seeks to place certain officers on salaries instead of fees. Protection for civil service and the placing of pension systems on a sound basis is asked in New Jersey.

*Local Government.* Consolidation is the order for some of Mississippi's more than 7,000 tax districts, New Jersey's 1,250 separate governments, and New York's 13,497 municipal units. A general reorganization is said to be necessary in each of these states. It is further proposed in New Jersey to reallocate the functions of state, county, and local governing areas, and to fix administrative responsibility in an individual officer or body functioning as a unit. The lack of any responsible head in counties is criticized in New York.

Alternative forms of county government should be presented in New York and Mississippi. A new charter should be drafted for New York City to consolidate a great many, if not all, of the functions of the five counties included within its limits. Charter revision is needed generally throughout the state, with home rule recognized in allowing voters to determine upon the form of government. Greater home rule also is the order in Rhode Island.

Finances should be improved in New Jersey by a revision of the municipal budget act and the bond act. Definite limitations would be placed on local budgets. Closer supervision of political subdivisions, adequate auditing, and control of bond issues is needed in Mississippi. A constitutional debt limit should also be prescribed. Although there have been no city defaults in New York, provision should be made to handle any which may occur.

*Taxation.* A constitutional convention to modernize the tax system, to provide a more equitable distribution of the tax burden, and to broaden legislative authority as to tax methods is asked by Governor Conner of Mississippi. Governor Ely of Massachusetts declares that human ingenuity has practically reached its limit in devising new forms of taxation. The Bay State's governor asserts his dislike for a retail sales tax, but says there is nothing left. Prime necessities should be exempt. Sales taxes were recommended also in New Jersey and South Carolina. Virginia's governor would measure the merchants' tax by sales rather than purchases, and would exact five per cent on admissions to moving pictures. Governor Green in Rhode Island opposes general sales taxes as

unfair. He would divert the gasoline tax proceeds for purposes other than roads and repeal exemptions. Governor Moore of New Jersey advocates use of all highway construction funds during the next three years for school purposes. Any such diversion will be opposed in Virginia.

Reclassification of real estate for state taxation is asked in Kentucky. The governor also would lift the tax burden from small home owners and the owners of unproductive farming lands. A similar view is presented by the Mississippi governor, who declares that a discrimination is necessary between classes of property and asks the gradual abolition of ad valorem levies on homesteads of a limited value. Governor Moore urges relief from the staggering tax burden oppressing New Jersey real estate. He speaks of fair assessments and equalization as a myth and asks that assessments be on a county basis under more effective state supervision. The overlapping of New York's governmental units is deplored by Governor Lehman, who declares them wasteful and ineffective for assessment purposes. The varying valuations by the many districts is said to be confusing. He states that 11,000 collectors, ten for each town, do the collecting. Governor Connor also argues against Mississippi's 7,000 tax districts, many of which could be consolidated. He further urges on the legislature the need for a policy on tax-forfeited lands. It is urged in Rhode Island that the law permitting appeals by taxpayers not filing a return be repealed. The governor also asks legislation for taxing property in storage and for paying taxes in instalments. In South Carolina, the governor urges that nothing be done that might result in an additional tax upon property.

Enactment of a gift tax and greatly reduced inheritance tax exemptions are asked in Virginia. Lowered exemptions also are requested for the income tax. The governor further urges that the legislature discontinue the deduction allowed for dividends received by taxpayers from corporations doing business in Virginia. He would exact a mileage tax from gas pipe lines, subject the bus receipts of street railways to the gross receipts tax, include miscellaneous receipts of power, light, heat, and water companies in the three per cent tax, and base the sleeping car tax on gross receipts rather than track mileage. He also urges that municipalities operating power, light, heat, or water service outside their limits be subjected to the regular tax. A general one per cent increase in the public utility levies is advocated in Rhode Island.

*Public Works.* A state planning board in connection with public works, conservation, transportation, health, recreation, etc., is proposed for Rhode Island. Kentucky's governor asks funds to meet federal allotments for the civil works program, and South Carolina's Governor Blackwood desires enabling legislation to promote state projects receiving federal aid. It is recommended in Massachusetts that the state sell bonds

direct to the public instead of to the United States for the purpose of raising funds to meet borrowings from the United States for public works projects. The governor believes lower interest can be obtained.

Governor Moore recommends that the state take over the greater part, if not all, of the roads in county systems, and that the counties in turn take over the township systems. Continue the pay-as-you-go plan for roads, is the mandate in Virginia. A sewer system which would take care of 87 per cent of the state's population is urged in Rhode Island. Development of a larger potable water supply and measures to draw industry and to develop a greater shipping center are suggested in New Jersey.

*Labor.* Ratification of the child labor amendment is asked in New York and Rhode Island. State prohibitory legislation also is urged in the latter state. Up-to-date minimum wage laws are requested in Massachusetts. The governor there also recommends continuation of the commission to negotiate uniform labor hours and administration in sister states. Governor Green in Rhode Island suggests a thirty-minute rest period in all cases where employment exceeds five hours. In New York, the legislature is urged to extend the emergency period for limiting hours and days on public works. Governor Lehman also would provide unemployment insurance, forbid "yellow dog" contracts, grant a jury trial for persons violating injunctions, enlarge workmen's compensation laws to include all occupational diseases, extend the system of free employment offices, and provide adequate regulation for fee-charging employment agencies. Regulation and progressive elimination of home work is asked in Rhode Island. The governor of South Carolina requests the establishment of a commission of labor and the placing of the state in a position to coöperate with the United States in the labor situation. Virginia's outgoing governor asks increased protection to labor and the enactment of a standard rock-dusting bill to prevent explosions in coal mines.

*Health and Welfare.* Virginia's outgoing governor also asked for capital outlays for insane hospitals and additional free beds at sanatoria for tuberculosis. The incoming governor declares the necessity for maintaining public health work generally. Greater care for mental and physical defectives also is said to be needed. Better institutions must be had in South Carolina. New Jersey's governor asks that counties be relieved of the care of the insane, tubercular, indigent, delinquent, and criminal, and that health activities be reorganized on a state-wide basis. He would also give greater attention to prevention of conditions causing disease. In New York, legislation is asked for slum clearance and low cost dwellings.

An old age pension system is requested in Rhode Island. Governor Green further asks a continuation of the organization for unemployment relief until May, 1935, and the governor of the Old Dominion urges con-

tinued coöperation with the United States for relief to the needy. The former seeks greater sums for veterans' welfare, and the latter declares Virginia's solemn duty to provide for Confederate veterans.

*Education.* Opinions expressed in New Jersey, Rhode Island, and Virginia are to the effect that educational standards must be maintained. The governor of the last-named state declares that no part of the state government causes him more concern than public education. He feels that the state should not bear the entire education burden, but nevertheless asks additional funds to help provide a minimum eight-month term and an increase in teachers' salaries. He also suggests consideration of tuition at state institutions. Governor Blackwood in South Carolina urges the combining of certain institutions of learning.

*Liquor.* The New Jersey governor criticizes the state liquor law and considers it a mere makeshift. Both the outgoing and Virginia governors recommend local option. The latter urges the placing of control in a three-man commission. The South Carolina chief executive declares that a wholesome and practicable law regulating liquor and providing for such revenue as is properly incident to such a law would be better than an unsuccessful attempt to enforce a bone-dry prohibition act.

*Criminal Law and Enforcement.* Numerous recommendations under this head are made by Governor Ely of Massachusetts. He would change the method of selecting jurors, would abolish the grand jury in its present form, and would permit the calling of a grand jury by a justice of a superior court or the supreme court for special purposes of investigation. He asks that defendants in district courts be required at the outset of a prosecution to elect whether to stand trial in the district court without right to appeal or to remove the case forthwith to the superior court upon claim of a jury trial. A reorganization of municipal and district courts into circuits with full-time judges also is recommended. The governor is convinced that the average potential law-breaker is restrained more by the probability of being caught than by the possible length of punishment. To that end, he recommends abolition of the death penalty except for planned murder or armed looting with intent to kill if necessary. The South Carolina governor asks a severe penalty for kidnapping and not less than five years for persons possessing machine guns or other weapons commonly used by kidnappers and hold-up gangs. Permanent revocation of the licenses of drunken drivers is urged. The governor also states that the legislature must provide a "prison life" for criminals assigned to prison. Governor Ely probably expresses a similar thought in saying that the aim of prisons should be to return convicts as better citizens. Governor Peery in Virginia declares that mob violence will not be tolerated.

A centralized department of public safety to control local police forces

except in routine matters is recommended in Massachusetts. A special coördination under a single head is asked for the metropolitan area surrounding Boston. There is said to be a compelling necessity for state-wide police protection in South Carolina. The New Jersey governor proposes the county as the basis for police protection except in populous municipalities. Rhode Island's governor seeks to abolish state police commissions for certain cities, and return the police power in such cases to the local authorities, but empower the governor to remove for cause.

*Banks and Insurance Companies.* Bank legislation for the period beginning with the expiration of the emergency act is needed in South Carolina. The Massachusetts governor seeks to remove the twenty-five per cent limit on the amount which the bank commissioner may borrow on the assets of a closed bank in order to pay a liquidating dividend. Outgoing Governor Pollard recommends closer supervision of Virginia banks at their own expense, and also states that he would place the duty of liquidating closed banks with the division of banking and insurance rather than with receivers appointed by the courts. Incoming Governor Peery agrees with this latter recommendation, but would extend it to include insurance companies.

*Public Utilities.* A probe of utility rates is asked in New Jersey. Dependable utility valuations are needed first in Virginia. The governor of the latter state would give the corporation commission power to amend the rates in time of emergency. He would also require utilities to file full information on proposed stock or bond issues and obtain the consent of the corporation commission. The commission's consent would be needed before a utility contracted with a holding company. Governor Lehman also seeks to control holding companies in New York by limiting charges to cost of service rendered to subsidiaries, and by forbidding utilities to pay money to various corporations in a holding chain for the latter's securities and services without the consent of the utilities commission. The governor also seeks to empower the commission to make temporary changes in rates, to assess a portion of investigating charges against utilities, and to regulate gas transmission lines. He rounds out his recommendations by advocating legislation authorizing municipalities to acquire any public utility plant, to sell its services, and to purchase and sell electricity developed on the St. Lawrence River. Promotion of rural electrification is urged in South Carolina.

*Motor Vehicles.* A reduction in automobile license fees is suggested in Kentucky, South Carolina, and Virginia. Governor Laffoon would fix Kentucky rates to correspond more nearly with those in the bordering states.

RAYMOND E. MANNING.

*Legislative Reference Service,  
Library of Congress.*

Direct Primary Legislation in 1932-33.<sup>1</sup> Overwhelmed by unbalanced budgets, and wrestling with problems of taxation, public relief, and other by-products of a major economic depression, the legislatures of the past two years have given scant attention to nominations for public office. Except for the adoption of the pre-primary convention in Massachusetts—effected by popular initiative—significant changes were few, and there was much less than the usual tinkering with details.

The adoption of the pre-primary convention in Massachusetts marks the successful culmination of a movement which has been gaining headway since 1921, and which has had support from both party organizations as well as non-partisan groups.<sup>2</sup> In 1927 the modification of the direct primary became one of the major issues of the legislative session. Eventually a bill providing for pre-primary conventions, reported favorably by the committee on elections, was referred to a recess committee. The majority of this committee expressed itself in favor of the idea, but declined to recommend passage of the bill because it felt that it would be impossible to secure favorable action by the legislature "until such time as the public had obtained further education concerning it."<sup>3</sup> By 1932, however, a similar measure, sponsored by a non-partisan group and embodied in an initiative petition, received the endorsement of the majority of a joint legislative committee and was approved by the overwhelming popular vote of 553,822 to 262,948.<sup>4</sup> In making its recommendation, the

<sup>1</sup> The legislatures of all states were in regular or special session in 1932 or 1933. Mississippi held a regular session in 1932; Kentucky, Louisiana, and Virginia held regular sessions in 1932 and special sessions in 1933; Alabama had special sessions in both years; Massachusetts, New Jersey, New York, Rhode Island, and South Carolina held regular sessions in both years; Arizona, Arkansas, Delaware, Idaho, Illinois, Indiana, Maine, Michigan, Ohio, Pennsylvania, Texas, West Virginia, and Wisconsin had regular sessions in 1933 and special sessions in 1932 or in both years; while the remaining twenty-five states held regular sessions in 1933 only. The 1933 session laws of California, New Jersey, New York, North Carolina, and Ohio were not available when this note was written, but the legislation of all but one of these states was covered in full reports from their legislative reference bureaus. Hence this note is complete except for one state—New Jersey. I wish to take this opportunity to thank the American Legislators' Association and the legislative reference services of the following states for prompt and intelligent assistance in supplying material used in the preparation of this note: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming. Legislation concerning registration, absent voting, and corrupt practices is not covered in this note unless it affected the primary exclusively.

<sup>2</sup> For details, see Merriam and Overacker, *Primary Elections*, pp. 97-98.

<sup>3</sup> *Report of the Joint Special Committee on the Administration and Operation of the Election Laws*, December, 1927.

<sup>4</sup> Secretary of the Commonwealth, *Election Statistics*, 1932, p. 376.

committee stated: "It is so generally recognized that the primary system has in practice developed many serious defects that an extended discussion of the subject is not necessary."<sup>5</sup> Such sweeping condemnation was probably unwarranted, but certainly there was no "extended discussion of the subject." Few ventured to oppose the measure, and there was little interest in the voting or the result.<sup>6</sup> Many sincere supporters of the direct primary voted for the proposal because of the conviction that opposition to the existing régime was so strong that the only real choice was between the pre-primary convention and outright repeal.

Briefly, the new law provides for the proposal of candidates for party nominations for all state officers by party conventions preceding the primary.<sup>7</sup> The names of these candidates, together with those of persons named in petitions in the regular way, will then appear upon the direct primary ballot and be voted upon in September. Candidates receiving the endorsement of the convention will have two advantages: their names will appear first on the ballot, the names of those proposed by petition following in alphabetical order; and the words "endorsed for the nomination by \_\_\_\_\_ party convention" will be printed on the ballot after their names. Voters may still "write in" the names of persons not printed on the ballot.<sup>8</sup> It will be necessary, therefore, to hold the primary whether any names are proposed by petition or not. Under the new law, Massachusetts will have two primary elections—the so-called "party primary" in April, and the "state primary" in September.<sup>9</sup> In presidential years, delegates to the national conventions, as well as delegates to the state conventions, and party committeemen will be chosen at the party primary.<sup>10</sup> Thus in the future the presidential primary will coincide with the state primary, instead of being held separately as formerly. Other provisions governing the presidential primary have been left unchanged.<sup>11</sup> The pre-primary convention must be held not later than June 15, the exact date being determined by the state committee.<sup>12</sup> The law regulates

<sup>5</sup> *Official Information to Voters*, State Election, November 8, 1932, p. 30.

<sup>6</sup> The proposition was voted upon November 8, 1932, in an election in which interest was centered upon presidential and state contests. The 792,778 voters who left their ballots blank on the pre-primary proposition give eloquent testimony to the lack of interest. In the joint committee on election laws, nine Republicans and one Democrat supported the proposal, while five members—all Democrats—opposed it.

<sup>7</sup> *Acts and Resolves of Massachusetts*, 1932, ch. 310 (to be published in the *Acts and Resolves of Massachusetts*, 1933, p. 3.)

<sup>8</sup> Secs. 7, 12, 21, 22.

<sup>9</sup> Sec. 5.

<sup>10</sup> Sec. 9.

<sup>11</sup> Sec. 7.

<sup>12</sup> Sec. 21.

the basis of representation in conventions and the rules of procedure to be followed in these assemblies, and prohibits the use of proxies.<sup>13</sup>

Massachusetts is not the first state to experiment with pre-primary conventions, Colorado and South Dakota having tried very different plans.<sup>14</sup> But it is the first state to institute a plan which follows in essential respects the proposal made by Charles E. Hughes many years ago and warmly endorsed by many critics since that time.<sup>15</sup> For this reason, the operation of the plan will be followed with peculiar interest. Will it provide for leadership and responsibility without sacrificing real control by the rank and file of the party, as its advocates claim? Or will it become so impossible for "anti-organization" candidates to counterbalance the advantages of convention endorsement that all possibility of control by the rank and file will be lost? It is to be hoped that the experience of Massachusetts will help us to formulate the answers to these questions.

With a few exceptions, changes in other states are trifling and may be disposed of briefly.

No state has radically changed the scope of its law, although Georgia, Minnesota, and South Carolina have extended the primary to certain local nominations.<sup>16</sup> Washington has provided for non-partisan nominations of justices of the peace, and Wisconsin of officers in certain counties and towns upon acceptance of the plan at a popular referendum.<sup>17</sup>

Idaho has joined the lengthening list of states providing for fall rather than spring primaries, and in the future will hold her primaries in August instead of in April.<sup>18</sup> Minor changes in the dates of primaries were made by Illinois in order to simplify the election calendar.<sup>19</sup>

One important change in qualifications for participation is found in the adoption of the wide-open primary by Minnesota. Hereafter no voter

<sup>13</sup> Secs. 3, 21, 22.

<sup>14</sup> The Colorado law provides that any candidate receiving ten per cent or more of the votes in the convention shall have his name placed on the primary ballot. In South Dakota, the majority and minority factions in the convention were entitled to have their lists of candidates printed upon the primary ballot. In both states additional names could be filed by petition. The South Dakota law was repealed in 1929 (ch. 118).

<sup>15</sup> Mr. Hughes first made his proposal in 1910, when he was governor of New York. A restatement and fuller consideration is to be found in "The Fate of the Direct Primary," in *National Municipal Review*, vol. 10 (Jan., 1921), p. 23.

<sup>16</sup> *Acts and Resolutions of Georgia*, 1933, No. 389, p. 227 (cities of 200,000 or more); *Laws of Minnesota*, 1933, ch. 327, p. 479 (fourth-class cities); *Acts and Joint Resolutions of South Carolina*, 1932, No. 634, p. 1162 (commission government cities of 50,000 to 100,000 population).

<sup>17</sup> *Session Laws of Washington*, 1933, ch. 95, p. 403; *Laws of Wisconsin*, 1933, ch. 27, p. 188.

<sup>18</sup> *General Laws of Idaho*, 1933, ch. 185, p. 341.

<sup>19</sup> *Laws of Illinois*, 1933, p. 561.

will be required to declare his party affiliation before voting, and candidates for the nominations of all parties will be printed in separate columns on a ballot headed "Consolidated Primary Election Ballot."<sup>20</sup> One wonders if the warning to voters that voting for candidates of more than one party will invalidate the ballot will be sufficient to protect them from many fatal errors.<sup>21</sup> Minnesota's conversion to the open primary is interesting in the light of the strong trend away from that form during the last ten years.<sup>22</sup>

The attempt to bar Negroes from the primaries in Southern states goes merrily on. After the Texas "white primary" law of 1923 was declared unconstitutional by the United States Supreme Court,<sup>23</sup> that state amended its law to give the party state committee power to prescribe qualifications for participation in the primary.<sup>24</sup> The Democratic state committee promptly barred Negroes, and the amended act came before the Supreme Court in 1932. In a five-to-four decision, it was held unconstitutional, the majority of the court, speaking through Mr. Justice Cardozo, maintaining that as the party committee acted under authority of the statute, the discrimination was one arising from the state law, and consequently was a denial by the state of equal protection of the laws.<sup>25</sup> It will be interesting to see if the Texas legislature will now repeal all legislation on the subject, leaving the party committee free to act as it chooses, and what the attitude of the Court will be toward debarment of Negroes by a party acting entirely on its own responsibility.

Arkansas has joined the list of Southern states with "run-off" or second primaries. Only the names of the two highest candidates in the first primary will appear upon the second ballot.<sup>26</sup> In Virginia, the commission to revise and codify the election laws recommended a run-off primary in the case of the gubernatorial nomination, but the measure was defeated in the legislature.<sup>27</sup> Washington, which requires successful nominees to receive at least ten per cent of the votes cast in the primary, has given party committees power to fill vacancies caused by the failure of any candidate to qualify under this provision.<sup>28</sup> A novel amendment to the

<sup>20</sup> *Laws of Minnesota*, 1933, ch. 244, p. 306, sec. 2.

<sup>21</sup> *Idem*.

<sup>22</sup> At the present time, only two other states, Montana and Wisconsin, have open primaries.

<sup>23</sup> *Nixon v. Herndon*, 273 U.S. 536.

<sup>24</sup> See this REVIEW, vol. 24 (May, 1930), p. 377.

<sup>25</sup> *Nixon v. Condon*, 286 U.S. 73 (1932). For a discussion of this decision, see R. E. Cushman, "Constitutional Law in 1931-32," in this REVIEW, vol. 27 (February, 1933), pp. 54-55.

<sup>26</sup> *Acts of Arkansas*, 1933, No. 38, p. 109.

<sup>27</sup> See *Report of February, 1932* (House Document No. 31).

<sup>28</sup> *Session Laws of Washington*, 1933, ch. 21, p. 147.

Nevada law provides that if only two candidates file for a partisan nomination for any office on any *one* party ticket, and no candidates have filed on any other party ticket for the same office, the names of such persons shall be omitted from the primary ballot<sup>29</sup> and both names shall be placed on the general election ballot.<sup>29</sup>

Many minor changes concern provisions governing filing of petitions and declarations of candidacy. Illinois, Pennsylvania, and Wisconsin have increased the number of signatures required for petitions for certain offices.<sup>30</sup> Massachusetts has made it possible for an incumbent in office to indicate this fact after his name on the primary ballot,<sup>31</sup> and Wisconsin now requires the first as well as the surnames of candidates to appear in nominating petitions.<sup>32</sup> Oklahoma and Virginia have made more stringent the avowal of party allegiance to which candidates for nomination must subscribe.<sup>33</sup> A number of other states have made changes in the details affecting the filing of petitions and the form of the ballot.<sup>34</sup>

Hereafter women will be represented on precinct, county, and state committees in Montana, and Oregon will elect a national committee-woman as well as committeeman.<sup>35</sup> Other states have made minor changes in the duties of party committees or the dates when meetings shall be held.<sup>36</sup> The date of the party conventions in Nevada has been changed from June to September.<sup>37</sup>

Maine, which in 1931 passed a new law regulating expenditures in primaries, has tightened up its provisions in a number of important respects. Clubs or groups of voters "organized for the purpose of actually participating in any campaign on behalf of a candidate for nomination to elective office, or tending either directly or indirectly to aid the candidacy of any person for any nomination whatsoever," are now brought within the scope of the law.<sup>38</sup> Most interesting is the provision for the

<sup>29</sup> *Statutes of Nevada*, 1933, ch. 69, p. 82.

<sup>30</sup> *Laws of Illinois*, 1933, p. 568 (state offices); *Laws of the General Assembly of Pennsylvania*, 1933, No. 271, p. 1106 (magistrates in first-class cities); *Laws of Wisconsin*, 1933, ch. 466, p. 988 (city offices).

<sup>31</sup> *Acts and Resolves of Massachusetts*, 1933, ch. 35, p. 42.

<sup>32</sup> *Laws of Wisconsin*, 1933, ch. 284, p. 605.

<sup>33</sup> *Session Laws of Oklahoma*, 1933, ch. 62, p. 114; *Acts of Virginia*, 1932, ch. 392, p. 795.

<sup>34</sup> *Acts of Indiana*, 1933, ch. 144, p. 788; *Acts and Joint Resolutions of Iowa*, 1933, ch. 19, p. 34; *Acts of Kentucky*, 1932, ch. 85, p. 421; *Laws of Minnesota*, 1933, ch. 172, p. 206; *Laws of Montana*, 1933, ch. 62, p. 117; *Acts and Resolves of Vermont*, 1933, No. 3, p. 5.

<sup>35</sup> *Laws of Montana*, 1933, ch. 6, p. 7; *Oregon Laws*, 1933, ch. 77, p. 86.

<sup>36</sup> *Public Acts of Michigan*, 1933, No. 146, p. 216; *Laws of North Dakota*, 1933, ch. 110, p. 161; *Oregon Laws*, 1933, ch. 124, p. 128; *Session Laws of South Dakota*, 1933, ch. 100, p. 95; *General Laws of Texas*, 43d Legislature (1933), ch. 225, p. 762.

<sup>37</sup> *Statutes of Nevada*, 1933, ch. 164, p. 212.

<sup>38</sup> *Laws of Maine*, 1933, ch. 254, p. 422, sec. 1.

creation of a joint legislative committee, composed of two members named by the president of the senate and three named by the speaker of the house, to investigate the expenditures and liabilities incurred "by and on behalf of" candidates for nomination. It is the duty of the committee to examine the statements filed in accordance with law, and at the request of any candidate, or on its own motion, to make a complete investigation of the financing of the campaign, summoning witnesses and requiring the production of records and papers.<sup>39</sup> The difficulty which arises when an attempt is made to limit expenditures in primary campaigns to enumerated categories is illustrated by the experience of Alabama. In 1932, it was found necessary to add to the list of legitimate expenditures—which had been passed only the year before—radio broadcasting, correspondence, and the use of canvassing cards.<sup>40</sup> Pennsylvania has extended the regulations governing the filing of reports of primary expenditures to treasurers of political committees, as well as candidates.<sup>41</sup> Several amendments deal with penalties for corrupt practices in primaries and the regulations governing contest procedure.<sup>42</sup>

In conclusion, it should be pointed out that during these two years bills providing for outright repeal of the direct primary were introduced in at least eleven states.<sup>43</sup> This would seem to indicate that the paucity of important changes reflects preoccupation with other problems rather than smug satisfaction with the direct primary as it stands.

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**A Legislative Council for Michigan.** In the general elections of 1932 and 1933, Michigan turned the Republicans from her Capitol and courted again her first political love of a century ago. Predominantly Republican for approximately eighty years, the voters of the state demanded a change in administration. The Democratic party succeeded in electing the governor and lieutenant-governor, in filling (with one exception) all of the administrative and judicial offices, and in returning a majority to both houses of the legislature. This repudiation of Republican leadership not only vested responsibility in a new party, but swept into office a host of officials little skilled in practical politics and unacquainted with the major

<sup>39</sup> *Ibid.*, sec. 6.

<sup>40</sup> *General Laws of Alabama*, Extraordinary Session, 1932, No. 298, p. 302.

<sup>41</sup> *Laws of Pennsylvania*, 1933, No. 61, p. 93.

<sup>42</sup> *Laws of Illinois*, 1933, p. 565; *General Laws of Texas*, 43d Legislature, 1933, ch. 38, p. 69; *Acts of Indiana*, 1933, ch. 242, p. 1098.

<sup>43</sup> Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Montana, South Dakota, West Virginia, and Wyoming. In addition, proposals for a pre-primary convention were introduced in Wisconsin.

problems of state government—a fact especially evident in the legislative branch.

The previous legislature (1931) had been overwhelmingly Republican: 98 of the 100 house members and 31 of the 32 senators had professed an affiliation with that party. The present legislature (1933-34) is distinctly, yet not overwhelmingly, Democratic: 56 members of the lower house and 17 members of the upper house are Democrats. Unfortunately, these newly created majorities are composed of men with little previous legislative experience. Fifty-four of the 56 Democrats in the house are enjoying their first legislative experiences; one served through the previous session; and Speaker Bradley is serving his fifth term. A similar situation prevails in the senate, where 13 of the democratic members are first-timers. Two served earlier in the upper chamber (1899 and 1911-13, respectively), and two previously sat in the house (1911-13 and 1913, respectively).

Such was the composition of the legislature which convened at Lansing on January 4, 1933, with the state in the throes of the depression and on the verge of financial collapse. Public expenditures were excessively high, tax delinquencies were threatening the operation of governmental agencies, and local units of government were facing default, in some cases bankruptcy. Hopes for immediate legislative relief, which appeared bright on the eve of the session, began to wane during the opening days and became totally eclipsed as weeks passed without the enactment of any legislation of major importance. However, the general public was unaware of the real causes for legislative delay.

The effective organization of the Michigan legislature was one of the most trying and difficult tasks ever undertaken by a victorious party. The legislators, recently recruited from private life, were not prepared to initiate a comprehensive program, nor were they familiar with the legislative process. The experienced members struggled frantically to effect a competent organization, maintain party discipline, and drill the new members in the intricacies of rules and procedure. Executive leadership was likewise inadequate; the legislative program submitted by the governor was incomplete and not acceptable to the legislative branch. All in all, three months were squandered before the legislature was prepared to undertake the consideration of a comprehensive program. Throughout the remainder of the session, the legislature functioned in a creditable manner; however, the net results were subjected to justifiable criticism and, at the time of adjournment, the necessity for a special session later in the year was freely acknowledged.

Speaker Bradley of the house, a serious student of government, had become convinced that the familiar faults of delay, uncertainty, and confusion, with resultant loss of public confidence, were attributable

directly to the archaic systems of legislation prevailing in a majority of the states. Disappointed because of a recurrence of these faults in an exaggerated form under his leadership, the speaker deemed the time opportune for the realization of his long harbored plan for a legislative council for Michigan. Almost entirely as a result of his efforts, the houses passed, with the necessary two-thirds majorities to give immediate effect to the law, "An act to create a legislative council, and to prescribe its powers and duties; and to make an appropriation therefor."<sup>1</sup> The bill was approved by Governor Comstock on June 28.

The act provides that the council shall consist of nine members: the president of the senate, the speaker of the house, three senators, and four members from the lower house. The latter seven members are to be appointed by the presiding officers, respectively, in such a manner as to insure bi-partisan representation from each of the two houses. Additional members of the legislature may be requested to serve upon sub-committees created by the council, and it is hoped that future appropriations will permit the appointment of expert advisers to these sub-committees. Between legislative sessions, the secretary of the senate and the clerk of the house are subject to the direction of the council. The members serve without additional compensation or expense allowances, except that traveling and incidental expenses may be allowed by the council and charged against a special appropriation.

The primary functions of the council are outlined clearly in the act: "The legislative council shall function during the interim between legislative sessions, and it shall be the duty of the council (a) to prepare a legislative program for submission to the next succeeding legislative session, (b) to accumulate and compile such information as the council may consider useful to members of the legislature, and (c) to furnish such information to members of the legislature."<sup>2</sup> The council has authority to inquire into the cost of all state activities and to have access to "all files and records of any state department, board, or commission."<sup>3</sup> In the course of its investigations, the council, by majority vote, may issue subpoenas requiring any persons to appear to be examined and "to bring any books, records, or papers" the council may direct.<sup>4</sup> The body is free to elect its chairman, adopt its rules of procedure, and complete its own organization. The act affords ample opportunity for thorough investigation and the formulation of a comprehensive program prior to the convening of the legislative assembly.

A shade of resentment toward the council is at present noticeable

<sup>1</sup> *Michigan Public Acts*, 1933, No. 206; Enroll. No. 153, I. E. Bill No. 663.

<sup>2</sup> *Ibid.*, sec. 2.

<sup>3</sup> *Ibid.*, sec. 4.

<sup>4</sup> *Ibid.*, sec. 5.

among some of the non-council members of the legislature. This ill-feeling is destined to disappear as the true purpose and functions of the council become more evident. The law does not anticipate that the council will become a steering committee for the direction of legislation, nor is there any possibility that it will produce a concentration of power which may wrest authority from the main body or jeopardize majority control. While it is hoped that the members may lend a considerable degree of leadership and obtain greater unity of purpose, the council, as such, can in no way usurp the legitimate functions of the legislature. It is purely an *ad interim* body, vested with no ordinance-making power. The council comes into existence only upon adjournment of the regular biennial session and is automatically dissolved with the expiration of the legislative term.<sup>5</sup> In fact, there is no assurance that the individual members will be returned to the ensuing session to defend the recommendations of the council.

In this attempt to restore legislative authority and responsibility, the sponsors of the plan do not propose to raise any undue obstacles in the way of administrative coöperation in the formulation of the legislative program. In practice, the advice of the administration is solicited, all sessions of the council are open to the governor or his representative, and members are encouraged and expected to consult with administrative officials in the course of their investigations. Furthermore, it is now anticipated that the non-legislative members of the sub-committees will be nominated by the governor, in many cases from his official family. The feasibility of this plan was demonstrated in the set-up of the committee created by the council for the study of liquor control.

Once the idea was enacted into law, legislative leaders lost no time in putting the council to its first practical test. Immediately upon adjournment of the session, the council was organized for the formulation of legislative programs for the anticipated special sessions. Six sub-committees were created which required the services of thirty-five additional persons, several of whom were non-legislative members appointed upon the recommendation of the governor.<sup>6</sup> Non-council members of the legislature named to these sub-committees included in each case the chairmen of the committees of the house and senate to which the bills would ultimately be referred. This policy, it is anticipated, will tend to harmonize legislative and executive differences, as well as expedite committee consideration and insure responsibility in the houses for the recommendations

<sup>5</sup> Under this provision the council retains its official character during special sessions. Some ill-feeling was engendered when the council presumed to continue its activities during the first special session of the present legislature.

<sup>6</sup> Still further sub-committees have been created to study basic problems in state government and are not expected to report to the present legislature.

of the council. Of the committees named, the one created to recommend liquor control legislation was the only one to report prior to the convening of the first special session, November 22.<sup>7</sup> The personnel of this committee and the mode of its investigation are mentioned here to suggest the probable course of council procedure.

Included in the membership of this committee were the chairmen of the liquor control committees of the house and senate, the chairman of the state liquor control commission, and two disinterested persons appointed upon recommendation of the governor. This group gathered together a mass of information, investigated legislation pending in other states, sent a delegation to inquire into the systems of control practiced in Ontario and Quebec, and conducted a series of public hearings. After six weeks of study, hearings, and compromises, this committee, with assistance from the office of the attorney-general, drafted a liquor control bill and submitted it to the council. This draft, together with executive recommendations, was considered by the council in executive session and finally rewritten. Copies of this new draft were made available to all members of the legislature prior to the date of the special session.<sup>8</sup> Thus within a few minutes after the opening of the session a carefully prepared bill was introduced in the house and referred to a committee which was already familiar with its provisions. However, the council was destined to learn of the perversities of state legislatures. The bill was enacted into law only after almost four weeks of legislative wrangling which produced more than 120 amendments. Yet, in spite of these discouraging reversals, the leadership of the council was seriously challenged only on a single major issue.<sup>9</sup>

The time has not yet arrived when one may safely evaluate the activities of the council. The one question to which it has devoted serious attention is too highly controversial in nature to be a fair criterion of the ability of the council to furnish the desired legislative leadership. Owing to its vigorous activities during the special session, the group has engendered some resentment and criticism, yet even its critics admit that the preliminary work was of exceptionally high character and that a considerable amount of time was saved in the formulation of the bill. However, it is evident that the council has not yet attained the degree of

<sup>7</sup> Reports from several other committees have been accepted by the council and their recommendations were before the legislature for consideration in the second special session, called for February 19.

<sup>8</sup> This procedure, including the drafting of bills, has been followed uniformly by sub-committees and the council in submitting recommendations.

<sup>9</sup> Serious differences arose over the composition of the liquor control commission. The council and the administration clashed on the issues involved in the governor's "insurrection" bond proposal, and the unwillingness of either to give way to the other defeated the measure in the first special session.

success predicted by its sponsors. We have yet to learn to what extent its recommendations will be respected by the rank and file of legislative members. This political observation comes from the Capitol: "The Council has spent weeks in preparing for the emergency session now in progress, but has yet to see general and willing acceptance of its views on major issues. . . . There is ample evidence that the members supposed to profit by the experience of these 'elder statesmen' want to do the work all over again, and in their own way."<sup>10</sup>

Students of government will agree that the state has moved in the right direction, and those familiar with the situation admit that the careful investigation preceding the drafting of the liquor control bill argues well for the future of legislation in Michigan. It is to be hoped that, in the future, appropriations for the council may be more in proportion to the character of its work, that the services of experts may be made available for investigations, and that additional compensation may be granted to council members. If the council can establish itself as a necessary adjunct to the present organization, the state will certainly be encouraged to provide an adequate legislative reference bureau and an expert bill-drafting service. These reforms would go a long way toward modernizing Michigan's present archaic legislative methods.

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<sup>10</sup> *Detroit Free Press*, Dec. 17, 1933.

## INTERNATIONAL AFFAIRS

**The Individual in International Organization.** International organization is generally regarded as an aggregate of machinery and processes whereby states coöperate with each other for the attainment of common objectives. Granting the validity of this conception, it may be shown that the fields in which states coöperate are of vital importance to individual persons. The international treatment of economic questions looks toward the improvement of the economic status of the individual. The coöperative efforts of states in regard to so-called political questions, such as disarmament, arbitration, and alliances, either promote amicable relations conducive to profitable transactions between the nationals of different countries or lead to hostile activities that injure economic activity and place the individual under the necessity of bearing arms.

The traditional theory of international organization has required that agencies dealing with private rights and interests confine their contacts to states, which assume to sponsor the interests of their nationals. This implies that diplomacy shall be between states in the interest of their respective citizens, that the arbitration of private claims against foreign states shall, in form, be between states, and, in short, that all activities taking place within international agencies shall be among government representatives speaking for individuals. Whenever the individual has seemed to occupy a position of his own by coming into direct contact with an international organ, he has generally acted with the prior consent of his national government.

A number of international agencies able to deal directly with individuals have been created by states, and proposals for others have been brought to their attention from time to time. One of the most striking instances of the provision for private action in international organization was embodied in the convention of December 20, 1907, establishing the Central American Court of Justice.<sup>1</sup> Articles 2 and 3 of that convention read as follows: "This Court shall also take cognizance of the questions which individuals of one Central American country may raise against any of the other contracting governments, because of the violation of treaties or conventions, and other cases of an international character; no matter whether their own government supports said claim or not; and provided that the remedies which the laws of the respective country provide against such violation shall have been exhausted or that denial of justice shall have been shown. It shall also take cognizance of the cases which by common accord the contracting governments may submit to it, no

<sup>1</sup> For text, see *British and Foreign State Papers*, Vol. 100, pp. 841-847.

matter whether they arise between two or more of them or between one of the said governments and individuals." A number of cases were brought to the Court involving litigation between an individual and a foreign state.<sup>2</sup> The Court was closed in 1917, following decisions regarding the Bryan-Chamorro Convention.

In 1907, a convention was drafted at The Hague for the creation of an international prize court to act as a court of appeals from national prize courts. It proposed to allow individuals, under specified conditions, to appeal to the international tribunal.<sup>3</sup> In the event that a neutral individual sought to bring an appeal, the state of which he was a citizen might either forbid the action or undertake the proceedings in his place.

Discussion of the wisdom of permitting individuals to appear in their own name in the Permanent Court of International Justice occurred in the Committee of Jurists which formulated the Statute. Some members of the committee were favorable to the idea, believing that justice for aliens in national courts was difficult to achieve and that the processes of diplomacy for the settlement of individual claims were lacking in justice.<sup>4</sup> The majority of the committee were not interested in the project, which therefore was dropped. Although unwilling to provide for action by individuals in the Permanent Court of International Justice, the committee put itself on record as favorable to the creation of a high court "competent to try crimes constituting a breach of international public order or against the universal law of nations."<sup>5</sup> It is apparent that such a project would permit the individual to come into contact with an international body only as one accused of crime, and not by his own action.

The advisability of allowing individuals to come before international judicial bodies was taken up by the Institute of International Law at its 1929 meeting.<sup>6</sup> A committee of the Institute recommended four general conditions under which action might be brought before an inter-

<sup>2</sup> Cases were brought by Dr. Diaz, a national of Nicaragua, against Guatemala (1908), by Salvador Cerda of Nicaragua against Costa Rica (1911), and by Alejandro Numez of Nicaragua against Costa Rica (1913). For summaries, see M. O. Hudson, "The Central American Court of Justice," *American Journal of International Law*, Vol. 26, pp. 759-786. Discussion may be found also in J. H. Ralston, *International Arbitration from Athens to Locarno* (Stanford University, 1929), pp. 244-245.

<sup>3</sup> J. B. Scott, *The Hague Conventions and Declarations of 1899 and 1907* (New York, 1915), pp. 188-203, Articles 4 and 5 of the Convention.

<sup>4</sup> *Procès-Verbaux of the Proceedings of the Committee*, pp. 204-206.

<sup>5</sup> This proposal was in Resolution II of the Committee of Jurists. For their report, see *ibid.*, pp. 747-748. The subject is discussed by Lord Phillimore in an article entitled "An International Criminal Court and the Resolutions of the Committee of Jurists," *British Yearbook of International Law*, 1922-23, pp. 79-86.

<sup>6</sup> *Annuaire de l'Institut de Droit International* (New York, 1929), Vol. 1, pp. 505-557.

national tribunal by individuals.<sup>7</sup> The Institute contented itself, however, with the adoption of a resolution expressing its opinion "that there are cases in which it would be desirable that the law allow individuals to act directly, under conditions to be determined, in their differences with states."<sup>8</sup>

Within the realm of international administration, provisions have occasionally been made whereby the individual is in direct contact with an international agency. An outstanding example is afforded by the International Joint Commission for the United States and Canada, established in 1909 to deal with the use of boundary waters.<sup>9</sup> The commission passes upon cases presented to it by individuals, involving the use, obstruction, or diversion of the waters, and issues permits in the performance of this task.

When an international administrative system takes the form of a condominium, the officials of the governing states are in immediate contact with individuals, defining private rights and duties, adjudicating disputes, and performing other services. This is evident in the system of international control for the city of Tangier, now in force. As provided by the convention of 1928, the functions of government within the city are divided between a group of European nations and the sultan of Morocco.<sup>10</sup> Legislative functions are delegated to a group of 27 persons representing 10 different nationalities. City administrative offices, which are in constant touch with native subjects, are selected from designated European states. For instance, the local police system is directed by French and Spanish officers. There is a mixed court for the city, containing judges of Belgian, British, Spanish, French, and Italian nationalities.

Administrative arrangements in force under the mandate system, in the European system of minority protection, and in the Saar Basin permit to the individual a right of petition which is significant in international procedure. In the mandate system, it is possible for the natives of man-

<sup>7</sup> They were: (1) when individuals are *créanciers* of a foreign state in connection with the execution of financial obligations; (2) when individuals are injured by violations of treaties by foreign states; (3) when individuals regard themselves as injured by illegal acts by foreign states; and (4) when individuals have a direct interest in the solution of conflicts of nationality. The committee also recommended that states proceed against individuals in the international court unless they preferred to follow internal procedure.

<sup>8</sup> *Annuaire de l'Institut de Droit International*, 1929, Vol. 1, p. 311.

<sup>9</sup> *British and Foreign State Papers*, Vol. 102, p. 137. See also R. A. MacKay, "The International Joint Commission Between the United States and Canada," *American Journal of International Law*, Vol. 22, pp. 314-316, and C. J. Chacke, *The International Joint Commission Between the United States of America and the Dominion of Canada* (New York, 1932).

<sup>10</sup> *Treaty Series* (British), No. 25, 1928. See also G. H. Stuart, *The International City of Tangier* (Stanford University, 1931).

dated areas, and for other individuals as well, to send petitions to the Mandates Commission asserting grievances.<sup>11</sup> Native petitions must be forwarded to the commission through the mandatory in charge, accompanied by any comments which the latter may wish to make. Petitions emanating from other sources go directly to the chairman of the commission, who determines which of them are sufficiently important to justify requests for explanations from the mandatories concerned. The Mandates Commission later decides which of the petitions submitted shall be brought to the attention of the Council. Although an accredited representative from the mandatory state is present when the Mandates Commission is discussing a petition, no provision has been made for the oral hearing of petitioners.<sup>12</sup>

While the procedure in minorities complaints permits only the members of the Council of the League of Nations to call the attention of the Council to actual or impending violation of treaty rights, provision has been made whereby individual members of a minority group may dispatch a petition to the Council setting forth grievances.<sup>13</sup> A subcommittee of three from the Council examines the petition; and on the basis of the findings made, or wholly apart from the findings, any member of the Council may bring the matter to the Council's attention. Both the subcommittee and the Council itself may be in direct touch with the government concerned, but no such contact is maintained with the complaining minority.

The Council of the League of Nations has provided that inhabitants of the Saar Basin may send petitions to the Governing Commission, which is required to forward them to the Secretary-General with such comments as it cares to make.<sup>14</sup> The commission also maintains other direct contacts with the natives. It is within the power of the agency to

<sup>11</sup> The system of petitions in the mandate system was defined by a resolution of the Council of the League of Nations adopted on January 31, 1923. See *Official Journal*, March, 1923, pp. 211, 298. The system is well described in Q. Wright, *Mandates Under the League of Nations* (Chicago, 1930), pp. 169-178.

<sup>12</sup> Several discussions of the question of permitting petitioners to appear in the commission have occurred. On one occasion the commission recommended to the Council that such an arrangement be made, but without avail. See Q. Wright, *op. cit.*, pp. 173-177.

<sup>13</sup> This procedure was defined by the Council in resolutions adopted on October 25, 1920, June 27, 1921, and September 5, 1923. For the resolutions see, respectively, *Official Journal*, Nov., 1923, pp. 1426-1432; *ibid.*, July-Sept. 1921, p. 22; and *ibid.*, Nov., 1923, pp. 1293. The subject of "Procedure in Minority Complaints" is discussed by J. S. Roucek in *American Journal of International Law*, Vol. 23, pp. 538-551. The procedure of the League in minority cases is ably described in J. Stone, *International Guarantee of Minority Rights* (London, 1932).

<sup>14</sup> The provisions relating to the powers of the Saar Basin Governing Commission may be found in the Treaty of Versailles, Pt. 3, §4, annex.

modify local laws and regulations after consultation with representatives of the inhabitants. In the realm of adjudication, the commission has established courts to hear appeals from the local tribunals.

The individual has not, to date, been given a place of any importance in the field of diplomacy or in conference action generally. Diplomacy is conducted by representatives of governments rather than by individuals acting in their own name or as spokesmen of groups or interests apart from governments. In view of the fact that the primary function of conferences is to negotiate treaties which may later become binding upon states, governments will be loath to have the negotiations in the hands of persons whom they cannot control. Were it to become the duty of conferences to prescribe rules binding directly upon individuals, without the necessity of states accepting them, the direct representation of individuals would be appropriate; but in that event a legislative body would have been established. The general conception of diplomacy, its origin and history, have all been based on the supposition that it is an affair of states.

Nevertheless, it is entirely possible for states in the process of negotiation, particularly when an international conference is used, to name as their representatives persons who are primarily spokesmen of certain select groups of people. This is the case in the conferences of the International Labor Organization, which are composed of "four representatives of each of the members, of whom two shall be government delegates, and the other two shall be delegates representing respectively the employers and the work people of each of the members."<sup>15</sup> The non-government delegates are selected by the member-states in agreement with the industrial organizations "which are the most representative of employers or work people, as the case may be, in their respective countries."

There have also been international conferences, usually known as semi-public conferences, in which the delegates of governments coöperated with private individuals. Such meetings are not so much diplomatic in character as consultative. They do not negotiate treaties, and if conclusions are formulated at all, they are in the shape of resolutions. The Pan-American scientific congresses are organs of this character, with government delegates and delegates from leading scientific associations and educational institutions taking part in their proceedings.<sup>16</sup>

The idea of functional representation, which has made much headway in some of the European states, particularly Italy, Russia, and Germany,

<sup>15</sup> Treaty of Versailles, Art. 389.

<sup>16</sup> See, for instance, the *Proceedings of the Second Pan-American Scientific Congress*, p. v, for the composition of the gathering. The Pan-American financial conferences of 1915 and 1920 furnish another illustration of organizations combining public and private activities.

has been discussed by several writers with reference to international organization.<sup>17</sup> M. Scelle, in considering the desirability of "democratizing" the League of Nations, criticizes the present system of representation as being confined entirely to states, and advocates a system admitting direct representation of private groups.<sup>18</sup> Adoption of such a proposal would give the individual a place of his own in international organization, apart from that which he possesses by reason of his attachment to his government. The plan involves minimizing the theory of geographical representation, based upon the governing units of society, and stressing the representation of social or economic groups. It envisages a more thoroughgoing adoption of the doctrine of functional representation than that embodied in the International Labor Conferences, where the delegates of economic groups are appointed by governments. It carries the doctrine of pluralism to a logical conclusion in the realm of international affairs.

It is apparent that the present position of the individual in international organization is regarded with dissatisfaction by many critics, some of whom are entirely sympathetic with the basic principle of international organization as opposed to cosmopolitanism, and upholders of a system of national states. Support for their position is found in the practical results which they believe might follow from adjustments favorable to the position of the individual. It is argued that to permit individuals to appear in international courts in their own behalf will relieve diplomatic mechanisms of the necessity of affording protection at the moment when local justice is alleged to have been denied, and that consequently the relations between nations will be improved.<sup>19</sup> Similarly, the creation of international administrative agencies empowered to regulate the activities of individuals would remove the subjects in question from the ordinary channels of diplomacy. With respect to international conferences, the main advantage sought in the advocacy of representation for the individual through other media than governments, or by allowing private members to sit with government delegates, is that all interests affected by a proposed action shall have an opportunity to assert themselves.

<sup>17</sup> R. Emerson, *The State and Sovereignty in Modern Germany* (New Haven, 1928), pp. 273-274; C. Delisle Burns, *The World of States* (London, 1917), pp. 121-122; G. Scelle, *Une crise de la Société des Nations* (Paris, 1926), pp. 140-142.

<sup>18</sup> G. Scelle, *op. cit.*, p. 140.

<sup>19</sup> While this is the most common argument used in behalf of proposals to permit individuals to appear in international courts, others have been presented. Professor Eagleton points out that in international claims commissions where private claims are made through governments, loss of nationality by the individual claimant before a decision is made nullifies the claim. He points out also that, in the case of *staatlos* persons, claims against a foreign state cannot be preferred, since there is no state able to do so. See his *International Government* (New York, 1932), p. 182.

For many years there has been no agreement among writers as to the status of the individual in international law.<sup>20</sup> A common view has been that the individual can be neither a member nor a subject of the international community.<sup>21</sup> Increasing support, however, has been given during recent decades to the opposite doctrine, contending that the individual is, in general, a subject of the law. A group of writers has argued that certain branches of the law, such as those relating to piracy, blockade, and contraband, necessarily imply the subjectivity of the individual.<sup>22</sup> A more radical school, rejecting entirely the doctrine of state sovereignty, has given even greater emphasis to the position of the individual.<sup>23</sup>

While it is not the present purpose to try to solve the problem of the status of the individual in general international law, it may not be inappropriate to indicate the effect produced upon the individual's status through his admittance into international agencies. It is evident that in the great majority of instances the individual's presence in international agencies has been legitimized by the state of which he is a citizen. In such cases, he would appear to have no independent position in international relations, apart from that provided by his own state.

Occasionally, however, the individual's rights in international bodies have not been derived from his state. This is particularly true where the right of petition has been granted. Within the minority system, the right of petition was provided by action of the Council of the League, on which the states concerned have no permanent representation, and some of them were lacking even in temporary representation at the time when

<sup>20</sup> An able discussion of this subject may be found in N. Politis, *The New Aspects of International Law* (Washington, 1928), pp. 18-31.

<sup>21</sup> This is the attitude of the following writers: T. J. Lawrence, *The Principles of International Law* (7th ed., by P. H. Winfield), p. 65; L. Oppenheim, *International Law* (1905), Vol. 1, p. 19 (1920 ed., by R. F. Roxburgh), Vol. 1, pp. 456-460; A. Hershey, *Essentials of International Public Law and Organization* (rev. ed.), p. 157; C. G. Fenwick, *International Law* (1924), p. 85.

<sup>22</sup> J. Westlake, *International Law* (1907), Chap. 2; Kaufman, *Die Rechtskraft des International Rechts* (1899); Wheaton, *Elements of International Law* (8th ed., 1866), Par. 19; A. W. Heffter, *Le droit international de l'Europe* (1883); G. Diena, "Le traité de conciliation et de règlement judiciaire entre l'Italie et la Suisse," *Revue de Droit International et de Législation Comparée*, Ser. 3, Vol. 6, pp. 1-16; H. Bonfils, *Manuel de droit international public* (1912 ed., by Fauchille), Nos. 154, 157.

<sup>23</sup> See W. Schücking and H. Wehberg, *Die Stellung des Völkerbundes* (Berlin, 1921); H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Tübingen, 1920). Professor Stowell, in his *International Law*, p. 8, holds that in the past states as "agents for the enforcement of international law have been confused with 'subjectivity,'" and that "fundamentally the law of nations is a law of individuals, enforced through the agencies of the governments of the communities into which mankind is apportioned."

those decisions were made.<sup>24</sup> Native right of petition in the mandated regions is also based on a Council resolution. On account of the uncertainty as to where sovereignty over these peoples is lodged, it would be a hopeless task to seek to discover whose consent would be needed in order to preserve the dependence of the individual in mandated areas upon his sovereign power.<sup>25</sup> Such arrangements as these doubtless provide the individual a status of some independence in international relations, thereby adding significantly to the arguments of those who for some time have claimed that he is a subject of the law.

It is apparent that whatever status in international law the individual now possesses, as a result of his contacts with international agencies, has been given him by states, acting either through treaties or through the Council of the League. His status is, therefore, dependent upon international action, to which his own state has usually, but not invariably, been a party. Unlike the rights and duties of states in international bodies, those of individuals are liable generally to annulment without the consent of the persons enjoying them. Present international organization does not admit any inherent right of individuals to a status of their own. It follows from these facts that the international basis of world society, as opposed to cosmopolitanism, remains intact. Cosmopolitan methods become, under such a régime, expedients of internationalism, mere tools to be taken up or laid down by states in their mutual relations. This condition must continue as long as states retain the right of annulling individual rights, regardless of the extent of the rights conceded.

Projects for direct private action in the machinery of internationalism necessarily contemplate restrictions upon the freedom of action which states possess. Most of these restrictions are identical in character with those that states have already accepted in other connections. For instance, the limitation upon national freedom involved in an agreement by a state to submit disputes with other states to judicial settlement is, in principle, like that implied in conventions permitting suit by individuals. It may also be shown that states have, by treaties, acquired for their nationals the right or opportunity of taking certain actions abroad, quite analogous, so far as the problem of sovereignty is concerned, to the right of acting directly in international agencies. An arrangement by treaty to the effect that the nationals of a state may lease or own land

<sup>24</sup> The following states are under such minority provisions: Albania, Austria, Bulgaria, Czechoslovakia, Danzig, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Rumania, Serb-Croat-Slovene State, and Turkey. See *Protection of Linguistic, Racial, and Religious Minorities by the League of Nations. Provisions Contained in the Various International Instruments Now in Force* (1927).

<sup>25</sup> Regarding sovereignty in mandated regions, see Q. Wright, *op. cit.*, pp. 327–339.

abroad, like an agreement for direct action by individuals in international agencies, implies that the state whose nationals have obtained such rights will offer no unreasonable impediment to the exercise of them. In both instances, states have paved the way for actions abroad by their respective nationals, over which little or no state control can later be exercised.

Proposals to extend the individual's realm of activities in international relations are more harmonious with some theories of sovereignty than with others. An application of the doctrine of functional representation to diplomatic organs must involve a complete acceptance of the pluralistic conception of sovereignty. The individual, acting through social and economic groups would, under such a system, be on an identical basis with states. The international basis of his status in law would be destroyed, so that his rights and duties would more closely approximate those of states. On the other hand, for governments to select as their representatives in international bodies persons who have attachments to certain social or economic groups, following the practice within the International Labor Organization, implies no admission of pluralism. The appointee, in this case, remains a government representative.

Generally, the creation through international action of individual rights in administrative and judicial organs does not add to the problem of sovereignty in international relations. Such arrangements, in relation to the problem of sovereignty, are no more difficult to explain than other agreements by which states limit their freedom of action, or create new international persons such as the League of Nations. The denial by many writers that sovereignty implies the absolutism of the state in international affairs conforms strikingly to the facts of international life as exemplified by such treaties.<sup>26</sup>

It is probable that the opposition of states to further limitations upon their freedom of action is more of an obstacle to an extension of the individual's position in international organization than are the theoretical aspects of sovereignty. Governments are notoriously reluctant to make commitments which tie their hands in unforeseen situations. It follows that projects calling for increased individual action in international agencies must not too far invade the domain of traditional state action. Doubtless differences of opinion would arise as to the proper limits for individual action.

It is not the purpose here to define arbitrary limits to the allowance of private action in affairs now under governmental control. Having called

<sup>26</sup> For discussions of the problems of sovereignty in international affairs, see R. Lansing, *Notes on Sovereignty* (Washington, 1931); J. W. Garner, "Limitations on National Sovereignty in International Relations," in this REVIEW, Vol. 19, pp. 1-24; J. Mattern, *The State, Sovereignty, and International Law* (Baltimore, 1928); H. J. Laski, "International Government and National Sovereignty," in *Problems of Peace* (London, 1927), pp. 288-301.

attention to the fact that several points of contact have already been established between individuals and international agencies, it remains merely to suggest that others of a similar nature might be feasible.

It has already been indicated that much support has been given to projects looking toward the appearance of individuals in their own name before international courts. There has been no unanimity, however, as to the types of action that might be placed under such a régime.<sup>27</sup> The most conservative, and probably the most tenable, attitude is that appeal to an international tribunal should not be possible in cases of either contract or tort, unless an international responsibility of the defendant state can be plausibly asserted.<sup>28</sup> To allow an appeal prior to an allegation of denial of justice would result in a form of extraterritoriality for aliens. International law does not apply until issues relating to the responsibility of a state are raised and, consequently, it is not appropriate to recognize an international jurisdiction prior to that time. In the case of the project for an international prize court in which individuals may appear, international jurisdiction may be advocated on the ground that the law to be administered is international and that local courts should not be the final judges of such law.

States which have committed themselves to the principle of compulsory jurisdiction by signing the Optional Clause can find little in the way of argument to oppose actions against them by individual aliens instead of states in international courts. Once a state permits itself to be sued, it does not seem to be important whether action is begun by a foreign state or by one of its citizens. The positive advantage of substituting private suit for public and, at the same time, giving an international tribunal a jurisdiction which the defendant state cannot deny, rests in the fact that controversial issues relating to the protection of alien rights would be removed from the arena of diplomacy. Diplomatic protection in its present form is frequently unjust, depending in the last analysis upon the strength of the protecting state rather than upon the inherent merits of the claims presented.

Although in a number of international administrative systems provision has been made for direct action by individuals, little discussion has been given to the theoretical aspects of the subject or to the practicability of extending the individual's opportunities in this field. On the one hand, in current practice the majority of international administrative bodies deal with the affairs of states, and on the other hand, the great bulk of private

<sup>27</sup> This was evident among the members of the Institute of International Law. See *Annuaire de l'Institut de Droit International*, 1929, Vol. 1, pp. 257-272.

<sup>28</sup> This attitude is well defended in E. M. Borchard, "The Access of Individuals to International Courts," *American Journal of International Law*, Vol. 24, pp. 359-365.

interests that are treated internationally are under the control of foreign offices or their subordinates. As a general rule, it would seem feasible that, when a subject of international regulation has separate and distinct national bearings, it should be left under the management of foreign offices or placed under an international administrative body confined in activities to contacts with states. Both arrangements permit national interests opportunity for expression.

If the interests in question are of general concern, without giving rise to distinct national attitudes, it would appear practicable to construct international bodies to administer them, permitting such agencies to deal directly with individuals. Admission is thereby implied that the Society of Nations as a group is more concerned than are separate states with the management of specified affairs, and that consequently mechanisms of a cosmopolitan nature, based on international treaties, may appropriately handle them. The difficulty of applying such general principles is, however, apparent. Disagreement as to the nature of the interest in question will inevitably lead to controversies over the form of the control to be established.

Among types of activities that might, with varying degrees of confidence, be regarded as falling within the category described in the preceding paragraph, there is one which seems particularly to deserve attention. International loans by individuals have long been a subject of wide interest and importance.<sup>29</sup> They have been made to weak or backward nations under conditions that have subjected those states to several forms of external control. Prospects of default stimulate tendencies toward intervention. Some governments have tried to mitigate the evils that accompany the foreign investments of their citizens by subjecting proposed loans to the scrutiny of their respective foreign offices, whose consent is made either essential or desirable before loans may be floated.<sup>30</sup>

The same considerations that have led to advocacy of individual action against states in international courts when denials of justice are alleged might be used in this connection to justify an international administrative body with powers over the individual in the making of foreign loans. Both in the provision of remedies for denials of justice and in the floating of foreign loans, national governments should be interested only in procuring just and satisfactory arrangements for their citizens. No government

<sup>29</sup> On this subject, see E. M. Borchard, *The Diplomatic Protection of Citizens Abroad* (New York, 1915), Pt. 1; T. W. Overlock, *Foreign Financial Control in China* (New York, 1919); and B. H. Williams, *Economic Foreign Policies of the United States* (New York, 1929), Chaps. 6-11.

<sup>30</sup> See B. H. Williams, *op. cit.*, Chap. 5, and C. C. Hyde, "The Negotiation of External Loans with Foreign Governments," *American Journal of International Law*, Vol. 16, p. 523.

policy should be affected in either case. The most interested parties in both instances are the individuals involved and the international community, which is anxious to prevent the development of conditions that threaten the amity of nations or place one of its members in a suspicious light because of aggressive activities in behalf of the protection of its citizens or their property. Just as the appearance of individuals before international courts in cases of denials of justice would relieve states of the necessity of extending protection, so the submission to an international administrative body of projects for foreign loans would have the effect of relieving states from responsibility for investments and of preventing a large number of loans that might prove troublesome. In so far as questions of denial of justice center about foreign investments, it would be consistent to establish some measure of international responsibility for original flotation as well as for later protection through judicial machinery. Standards of reasonable foreign investments might be agreed upon in a general way in an international treaty and administered by an international body. Such an organization would, it is believed, provide an analogy in the field of international administration to the judicial treatment in international tribunals of cases involving denials of justice.

It has already been shown that the individual's place in diplomacy cannot be enhanced through the adoption of the idea of functional representation without undermining fundamental principles of international organization. The selection of the representatives of special economic or social groups as government delegates, following the method of the International Labor Organization, furnishes a compromise with the principle, which, conceivably, might be more widely recognized. As a system of representation, it is best fitted for conferences emphasizing the economic or social aspects of the questions treated. Any future extensions of the idea would be expected to be within those fields.

The purpose of this paper has been merely to discuss the questions of theory involved in arrangements for direct action by individuals in international bodies, and to suggest possible, or even logical, extensions of the principle. It is recognized that any dogmatic proposal to overhaul the present constitution of internationalism along such lines would be open to serious objections. The gradual extension of the rôle of the individual in foreign affairs seems, however, entirely natural and practicable.

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**The Administration of Mandates by the British Dominions.** The former German colonies occupied by the Dominions in 1914 were entrusted to them, as mandatories under the League of Nations, at the Peace Conference of 1919. Of these territories, administered as C mandates since

December, 1920, three are located in the South Seas. Western Samoa, now a mandate<sup>1</sup> of New Zealand, is the larger part of a small group of islands; New Guinea, a mandate of Australia, consists of the northwestern portion of the large island of New Guinea and numerous smaller islands; while Nauru, a British Empire mandate administered by Australia, is a tiny phosphate island. The fourth Dominion mandate, South-West Africa, is a large and somewhat arid territory adjoining the Union of South Africa, which acts as mandatory.<sup>2</sup>

Upon the outbreak of the World War in 1914, the Dominions willingly acceded to Great Britain's request for seizure of German colonial wireless stations by occupying these neighboring territories, German possession of which they had long begrudged.<sup>3</sup> At the Peace Conference, Mr. Lloyd George and the Dominion premiers put up strong arguments for annexation of these occupied colonies. Public sentiment in New Zealand and Australia undoubtedly favored British annexation of Western Samoa and New Guinea, respectively, but would probably have supported direct annexation of the valuable phosphate island of Nauru. South African opinion was, for the most part, favorable to direct annexation of South-West Africa. President Wilson's opposition to annexation resulted in a compromise establishing for territories occupied by the Dominions and Japan the C mandate system, which gives the mandatories a large degree of control, amounting to a monopoly in the economic field.

Though all three Dominions relied on the treaty of Versailles as a legal basis for their control of mandates, their methods in assuming such control varied according to differences in imperial and international outlook. South Africa, always restive under imperial restrictions and jealous of her international status, asked no aid from the British government in taking over her mandate, but relied on her constitution and on her international status conferred by the treaty of Versailles. New Zealand, by contrast, always loyal to Great Britain and slow to claim a separate international status, secured a British order in council authorizing her administration of Western Samoa. Australia, without obtaining specific aid from the British government, relied upon the British Treaty of Peace

<sup>1</sup> The term *mandate*, as used in this article, refers not merely to the text of a mandate agreement, but usually to the mandated territory itself.

<sup>2</sup> Mandate	sq. miles	Area in			Classified population in 1930	
		European	Chinese	Native		
Nauru	9.3	147	1,100	1,427	2,684	
New Guinea	93,000	2,917	1,238	521,385	525,540	
Western Samoa	1,235 (a)	2,749	955	40,687	44,571	
South-West Africa	322,450	31,586		243,936	275,522	

(a) Area of two principal islands, Savai'i and Upolu.

<sup>3</sup> Complete subjugation of South-West Africa was delayed until July, 1915, by the Boer rebellion in South Africa.

Act, as well as upon her own constitution, in assuming control of New Guinea. Australian administration of Nauru, a British Empire mandate, however, results from an inter-imperial agreement embodied in a British statute. This Nauru Island Agreement of 1919 between Great Britain, Australia, and New Zealand provided that the three governments should buy the interests of the Pacific Phosphate Company in Nauru, and should thereafter have the privilege of purchasing phosphates at cost.<sup>4</sup> The phosphate works, under the agreement, are controlled by the British Phosphate Commission consisting of three members, one appointed by each of the governments concerned. Power to appoint the civil administrator of Nauru was to be rotated among the three governments. Thus far, however, the Australian government, which first occupied the island, has exercised it.

With regard to the status of inhabitants of the Dominion mandates, there has been a tendency on the part of the mandatories to give their own nationality to European aliens in the mandates where there are such aliens, notably in South-West Africa, where, by an act of the South African Parliament of 1924, all Germans not declining naturalization were made British subjects. Furthermore, by the Union Nationality and Flags Act of 1927, all British subjects in South-West Africa, including naturalized British subjects who had resided three years in the territory, were made nationals of the Union of South Africa. This movement has been sanctioned with reluctance by the members of the Permanent Mandates Commission and Council of the League of Nations, who are unwilling to make a precedent of the case. Because of certain Council resolutions of 1923, the mandatories have not attempted to impose their nationality upon the native inhabitants of the mandates, who may apply for individual naturalization in Western Samoa and South-West Africa, but are otherwise described as British protected persons, except in the case of South-West African natives, who are declared to be under the protection of the Union of South Africa. The mandatories have not, however, always made it clear to the natives that they are not British subjects, a situation which has called forth the criticism of the Permanent Mandates Commission.

<sup>4</sup> The agreement provided that the three governments should pay £3,500,000 to the British Pacific Phosphate Company, which had acquired a valuable concession under the German régime. Great Britain and Australia were each to pay forty-two per cent of the sum and New Zealand sixteen per cent, while each country might purchase phosphates in the above proportions. So far, Great Britain has purchased practically none, while Australia and New Zealand, as permitted by the agreement, have thus been enabled to buy more than their proportionate share. *British Commons Debates*, vol. 130, cols. 1300–1307 (June 16, 1920); *Report on Administration of Nauru*, 1931, pp. 22–25.

After the C mandate system was established, the Dominion mandatories terminated the administration of the several territories by military forces and established civil administration. A study of the forms of civil government in the Dominion mandates shows that while the general framework is similar in all cases, there are marked variations within the framework, due to the size of the mandate, to its degree of propinquity to the mandatory, and to the number and character of its population. The mandatory's earlier experience with backward peoples has also influenced the form of government established in the mandate.

The chief executive official in a Dominion mandate, the "administrator," has large governmental powers, limited, however, by the mandatory, whose ultimate responsibility for the mandate must be preserved, according to standards established by the Permanent Mandates Commission and Council. Important executive powers of the administrator include the appointment of public service officials, members of advisory councils or legislative bodies, and judicial officials. The administrator's legislative powers are exercised by executive proclamation, especially in Nauru and South-West Africa, or in conjunction with a legislative body in Western Samoa and South-West Africa. The administrator of New Guinea has heretofore had the very restricted legislative power of making regulations under ordinances of the governor-general of Australia; but in accordance with the New Guinea Act of 1932, the administrator and the legislative council authorized by the act will henceforth exercise a subordinate legislative power.<sup>5</sup> Judicial powers of the administrator, in addition to certain appointive powers, are limited to pardon and remission of sentence, except in Nauru, where the administrator has made procedural rules, sat on courts, and heard appeals. The Dominion mandatory exercises control over the administrator directly through appointments and legislation, and indirectly through instructions to the administrator and reservation of legislation made by him alone or with a subordinate legislative body. From a legal point of view, the strongest administrator is that of Nauru, with that of South-West Africa in second place.

The men who have served as administrators of the Dominion mandates are a distinguished group, the majority of them having notable military records. Though none of them has been a veteran colonial administrator,<sup>6</sup>

<sup>5</sup> *Australian Parl. Debates*, p. 2189 (Nov. 10, 1932).

<sup>6</sup> General Griffiths, though a professional military man, has had the widest experience among the administrators of Dominion mandates, for he served as military administrator of New Guinea prior to 1921, and then as civil administrator of Nauru in 1921-27. Finally, in June, 1932, he was appointed acting administrator of New Guinea for a year. Permanent Mandates Commission, *Minutes*, XXII, pp. 56-58.

they have, apparently, interested themselves in the welfare of the inhabitants of the mandated territories. When there has been a conflict of interests between European and native inhabitants of a territory, the administrators have, on the whole, upheld the interests of the natives, especially in New Guinea and Western Samoa, where the European population is small, and in Nauru, where it is negligible. For example, Administrator Wisdom of New Guinea was disliked by planters, traders, and miners because of his devotion to native interests. In Western Samoa, Administrator Richardson's difficulties with the *Mau* were caused by his overzealous efforts on behalf of the natives, whose hostility to the administration was aroused largely by aggrieved half-castes. The Permanent Mandates Commission, before whom Administrator Richardson appeared, criticized him for lack of psychological insight and for over-confidence in people.<sup>7</sup>

In South-West Africa, the only Dominion mandate suitable for extensive European colonization, there is a strong European minority in whose interest the administrator has, upon occasion, taken severe punitive measures against the natives. After the Bondelzwart rebellion of 1922, a majority of the Permanent Mandates Commission censured Administrator Hofmeyr for conditions causing the rebellion and for leading the suppression of the rebellion in person.<sup>8</sup>

To a large degree, the administrators of the Dominion mandates have fulfilled their duties to the satisfaction of the Permanent Mandates Commission; but, of course, the Commission is handicapped in forming judgments by the fact that most of its information about a mandated territory comes from the annual report written by the administrator or a minister of the mandatory government, from the accredited representative of the mandatory, or from petitions sent by the mandate inhabitants through the mandatory to the Commission. Even officials in a mandatory country admit a lack of unbiased information about a mandated territory.<sup>9</sup>

The administrator's advisory council, with its membership of appointed

<sup>7</sup> *Ibid.*, XXII, p. 58; XIII, pp. 229, 230.

<sup>8</sup> *Ibid.*, III, pp. 294, 295.

<sup>9</sup> Mr. Beasley, Australian minister in charge of Nauru in the Scullin government, stated, after this government resigned, that it was difficult to get unbiased information regarding conditions in Nauru. He mentioned particularly Administrator Newman's attempt, first to make Chief Detudamo head chief against the wishes of the other chiefs and, failing this, to depose all chiefs. Newman allowed only such information as he desired to reach Australia, and could dominate an investigator because the community was so small. Mr. C. W. C. Marr, minister in charge of Nauru in the Lyons government, announced in Parliament that Mr. Newman was not to be reappointed upon expiration of his five-year term in December, 1932. *Australian Parl. Debates*, pp. 2623-2625 (Nov. 22, 1932).

official and non-official members, or occasionally of official members only, appears in some form in all of the Dominion mandates. In New Guinea, the council has been composed of appointed official European members, but the New Guinea Act of 1932 provides also for a non-official European member chosen by and from the non-official members of the legislative council authorized by the same act.<sup>10</sup> The South-West African advisory council consists of appointed and, since 1925, elected European members. In Nauru, there was formerly a composite European and native advisory council, but since 1927 there have been three separate entities with *ex officio* or appointed members representing European, Chinese, and Nauruan interests. In Western Samoa, members of the native advisory body, or *Fono* of *Faipules*, were formerly appointed by the administrator to hold office at his pleasure, but this body was suspended from 1928 to 1931 because during the *Mau* disturbances a large number of the Samoans lost confidence in the *Faipules*, who stood by the administration. When the *Fono* was reconstituted in 1931, the administrator appointed as *Faipules* only those persons nominated for the position by the Samoans of the several districts.<sup>11</sup>

Two legislative bodies which have existed in the Dominion mandates for several years are the legislative council of Western Samoa, authorized by the Samoa Act of 1921, and the South-West African legislative assembly, authorized by the South-West African Constitution Act of 1925. Provision for a third legislative body, the New Guinea legislative council, is made in the New Guinea Act of 1932. In Western Samoa, the legislative council is composed of appointed official and elected non-official European members and, since 1929, of appointed Samoan members as well. Samoan membership in the legislative council was secured only after lengthy agitation on the part of the *Mau*, a discontented faction of half-castes and natives. Official members have always been in the majority in the legislative council of Western Samoa. In South-West Africa, the legislative assembly is composed of appointed and elected European members, but here the elected members are in the majority. The New Guinea legislative council will be composed of appointed European members, official and non-official, with the former in a majority.<sup>12</sup>

All these legislative bodies are legally in a position of great subordination to the mandatory governments, for not only is their field of legis-

<sup>10</sup> *Ibid.*, p. 2188 (Nov. 10, 1932).

<sup>11</sup> Members of the *Fono* of 1931 were appointed for one year only, so as to give those Samoans who did not at once coöperate with the administration another chance to nominate *Faipules*. In 1932, a new *Fono* was constituted by the same procedure as in 1931, except that the *Faipules* was appointed for three years. *Report on Administration of Western Samoa, 1930-31*, pp. 3, 4; *1931-32*, pp. 2, 3.

<sup>12</sup> *Australian Parl. Debates*, pp. 2188, 2189 (Nov. 10, 1932).

lative power restricted, but their ordinances may be disallowed or vetoed by the administrators or mandatory governments, who may also, in some instances, legislate on matters within the competence of these subordinate legislatures. In practice, however, the legislative assembly of South-West Africa has exercised sufficient financial autonomy to arouse the fears of the Permanent Mandates Commission that the responsibility of the mandatory is being impaired.<sup>13</sup> Legislation passed by the South-West African assembly and the Samoan legislative council is predominantly economic in character, as is legislation, in general, for each Dominion mandate, though for Western Samoa repressive political measures have also been numerous.

There is more uniformity among Dominion mandates with regard to judicial organization than with regard to other branches of government. Systems of law in force are similar, except in the case of South-West Africa, where Roman Dutch law is substituted for British common law and statutes. In each mandate, there is a central or high court with broad civil and criminal jurisdiction, from which there is an appeal to a high court of the mandatory, except in the case of Nauru. In South-West Africa, which has the most complicated judicial structure, there are other superior courts; while in Western Samoa, by contrast, the whole judicial system is centralized in the high court. All the mandates, except Western Samoa, have separate inferior courts of limited civil and criminal jurisdiction, with appeal to the high or central court of the territory. In New Guinea and South-West Africa, special courts for natives have been established in which native custom is recognized. In these territories and in Western Samoa, there are also certain administrative tribunals. Most persons convicted in courts of the Dominion mandates are natives, except in Nauru, where the Chinese indentured laborers are the most frequent offenders. Since the natives possess comparatively little property, civil offenses are far less common among them than criminal. In South-West Africa, which has the greatest number of European inhabitants, an appreciable minority of the convicts are Europeans.

*Mau* disturbances in Western Samoa prevented the judicial system there from functioning normally, especially in 1928 and 1929. Though there were many convictions for intimidation and breach of repressive ordinances, at the same time a large number of criminal offenders remained at large, because native police refused to execute warrants against members of the *Mau*. Since 1930, however, the authority of the courts has been maintained and the number of outstanding criminal cases gradually reduced. Cessation of *Mau* activities, to a great degree, caused a sharp decline in the number of convictions for violation of repressive

<sup>13</sup> Permanent Mandates Commission, *Minutes*, XX, pp. 57-59, 233.

ordinances and for contempt of court in 1931-32, as compared with 1930-31.<sup>14</sup>

A survey of the police forces of the Dominion mandates reveals that the European staffs are small compared with the native staffs, except in South-West Africa, where there is still a sizable European staff despite severe retrenchments in 1931 and 1932.<sup>15</sup> In Western Samoa, the European force, originally much smaller than the native, was increased because of the *Mau* activities until in 1929-30 it exceeded the native force; but, though ten times larger than formerly, the European force was still relatively small. As a result of the economic depression and the decline in *Mau* activities, the European force was later decreased until, in 1931-32, it was again smaller than the native force.<sup>16</sup> During the turbulent years, 1928-29 and 1929-30, the New Zealand government granted a special subsidy to support the augmented European force in Western Samoa, but since that time the Samoan administration has supported its own police.<sup>17</sup> Though sometimes unable to handle a situation unassisted, the European police in the Dominion mandates seem to have been uniformly loyal to their administrations. Native police, as might be expected, have proved less reliable. The Samoan administration has encountered great difficulties in maintaining a loyal effective native force, while the New Guinea administration had to cope with a native police strike in Rabaul in 1929.

With respect to general administrative organization, Dominion mandates fall into two groups: Nauru and New Guinea each has a simple organization of seven departments, while Western Samoa and South-West Africa have a complicated organization of thirteen and seventeen departments, respectively. The New Guinea administrative organization has been criticized for over-centralization in the Ainsworth Public Service Report of 1924 and in the Australian Parliament, where charges were made that the government secretary in New Guinea dominated and interfered with other department heads. In 1932, however, a measure of decentralization was obtained through the transfer of the district services from the government secretary to the commissioner of native affairs.<sup>18</sup>

<sup>14</sup> *Report on Administration of Western Samoa, 1929-30*, p. 14; 1930-31, p. 14; 1931-32, p. 9.

<sup>15</sup> In 1930, the South-West African police force consisted of 274 Europeans and 214 natives. By 1932, the European force had been reduced by one third and the native by more than one half. *Report on Administration of South-West Africa, 1930*, p. 16; 1931, p. 12.

<sup>16</sup> Samoa Police: 1929-30, European 50, native 30; 1931-32, European 22, native 38. *Report on Administration of Western Samoa, 1929-30*, p. 19; 1931-32, p. 11.

<sup>17</sup> *Ibid.*, 1931-32, p. 18.

<sup>18</sup> *Australian Parl. Debates*, p. 4249 (Sept. 11, 1924); p. 1773 (Nov. 2, 1932).

By contrast, centralization is obviously needed in Western Samoa<sup>19</sup> and South-West Africa, the size and population of which do not warrant the existence of so many departments.

Of greater importance than the organization of administrative departments is the organization and functioning of the public services of the Dominion mandates; for, however good the intentions of the mandatory government and administrator may be, successful administration is impossible without a trained and efficient staff of public servants. The tendency to unify the public services of the mandatory and mandated territory is one which should be noticed. Public services of Nauru and New Guinea are still separate from those of Australia, but the South-West African public service was amalgamated with that of South Africa in 1923; and, by a provision of the 1931 New Zealand Finance Act, the Samoan public service was put under the New Zealand public service commissioner's control.<sup>20</sup> Nearly all important posts in the public services of the mandates are held by Europeans, and in New Guinea by British subjects only. Natives have been admitted to minor posts, except in New Guinea, and to one or two major posts in Nauru.<sup>21</sup> Public services of all Dominion mandates are supplemented by loan or transfer of officials from the Dominion public services, a practice necessary in the tropical territories, but one which, if carried too far, causes a lack of permanence and continuity in the services of the mandates.

For the most part, the Dominions, even in prosperous years, were unable to provide a sufficient number of adequately trained public service officials for their mandates. Moreover, during the financial depression, retrenchments have made the situation more difficult. Lack of adequate financial support, except in Nauru, is a fundamental difficulty which will doubtless continue for some time. Though standards of efficiency in the public services of the Dominion mandates have been raised since the inception of the mandate system, there has been no thorough system of training European officials for their work in the mandated territories, except in New Guinea, where a cadet system has been inaugurated. In consequence, most officials engaged in native administration have had

<sup>19</sup> Prior to retrenchments caused by the depression, there were, in 1929, fifteen departments in Western Samoa. *Report on Administration of Western Samoa, 1929-30*, p. 24; 1931-32, p. 14.

<sup>20</sup> The unification of the Samoan public service with that of New Zealand was in accordance with the recommendations of the Verschaffelt Park Berendsen Public Service Report of 1928. Sir Thomas Wilford informed the Permanent Mandates Commission, on November 5, 1931, that budgetary conditions made it impossible to establish a special civil service for Western Samoa. *Ibid.*, 1931-32, p. 3; Permanent Mandates Commission, *Minutes*, XXI, p. 147.

<sup>21</sup> In 1929, a Nauruan was appointed head of the new department of Nauruan Affairs. *Report on Administration of Nauru, 1929*, p. 7.

no special preparation, a deficiency which was revealed particularly in Western Samoa during the prolonged *Mau* disturbances. The Permanent Mandates Commission has been greatly concerned about the rapid turnover among officials, the shortage of certain types of officials, especially medical and agricultural, and the general shortage of officials in certain outlying regions of the territories.

Though primary responsibility for administration in matters relating to the natives in the Dominion mandates rests upon the administrators and other European officials, some degree of responsibility has been delegated to the natives themselves. In New Guinea, where natives are excluded from the public service and tribal organization has been disturbed to a considerable degree, little responsibility for native administration has been entrusted to the natives. Likewise, in the Police Zone of South-West Africa, where the influx of European settlers has destroyed native tribal organization and brought about a system of native reserves, native administration is largely in the hands of Europeans, though natives are admitted to minor posts in the public service. Natives have shared responsibility for administration most successfully in the regions of South-West Africa north of the Police Zone, where tribal organization exists undisturbed by Europeans, and in Nauru, where conditions are similarly favorable and, in addition, natives fill several important positions, as well as all minor positions in the public service. Despite a special attempt to train natives for public service positions in Western Samoa, the elaborate system of native administration, in which natives were allowed to participate to a great degree, broke down under the strain of the *Mau* agitation instigated largely by half-caste traders for their own advantage. Since the *Mau* agitation has recently become quiescent, some of the suspended native officials have resumed their duties. Reorganization of the *Fono of Faipules* in 1931 has already been mentioned.

A study of the public finances of the Dominion mandates shows that Nauru is the only territory of the four which has not received assistance, in the form either of subsidy or of loan, from the mandatory. Indirect taxes, especially customs duties and mining taxes, are most important as internal sources of revenue for the territories. Revenue from taxes levied upon natives is comparatively inconsequential in amount, but such taxation has been a cause of grievance, as we shall see, in Western Samoa and, to some extent, in South-West Africa.

Nauru's fortunate independent financial position is largely maintained by revenue derived from the British Phosphate Commission in the form of a royalty on phosphate exported and an annual police contribution of £1,000. Customs duties, including an export duty on copra, are another important source of revenue, but materials and appliances used by the British Phosphate Commission in extracting phosphates are exempt from

duty. There is a native capitation tax of fifteen shillings, the small proceeds of which, since 1928, have been used solely for the benefit of the Nauruans. But even prosperous Nauru has not been entirely unaffected by world financial conditions. In 1931, due to the depression and stormy weather, there was a decrease in the export of phosphate, which resulted in a small deficit in the territory's budget. In the following year, however, a large increase in the export of phosphate caused an increase in the territorial revenue more than sufficient to balance the budget.<sup>22</sup>

New Guinea, though not self-supporting, has hardly been a serious drain on Australia. In addition to loans,<sup>22</sup> the Australian government has granted annually a mail subsidy of £44,000 and, until 1930, the sum of £10,000 for native welfare.<sup>23</sup> New Guinea's chief sources of revenue are customs duties, including an export duty on copra.<sup>24</sup> In 1932, there was a marked increase in royalties from gold mining, an activity which has benefitted the territory financially during the depression. Natives, excluding indentured laborers, may be subject to a head tax not exceeding ten shillings per annum. This tax, which is not always levied at the maximum rate, constitutes less than ten per cent of the total revenue. Employers of native indentured laborers are required to pay an education tax of one shilling per month per laborer into the native education trust fund.

Western Samoa, though only a small territory, has been quite an expense to New Zealand, which has recently attempted to make the mandate self-supporting. The Samoan public debt exceeds that of the much larger territory of New Guinea.<sup>24a</sup> Furthermore, New Zealand has subsidized Western Samoa liberally, to the extent of £20,000 for native welfare annually, until the year 1931–32, when the depression made retrenchments necessary. *Mau* disturbances in Western Samoa have entailed additional expenditure by New Zealand for marines landed from cruisers to restore order in the territory, and for the upkeep of special military police in Western Samoa during 1928–29 and the year following. As in New Guinea, customs duties, including export taxes on copra and cocoa, are vital sources of revenue in Western Samoa.<sup>25</sup> A second kind of indirect taxation

<sup>22</sup> Permanent Mandates Commission, *Minutes*, XXII, p. 46; *Report on Administration of Nauru*, 1932, pp. 9, 13.

<sup>23</sup> In 1930, the grant for native welfare was cut to £5,000, and since then it has been omitted. *Report on Administration of New Guinea*, 1930–31, p. 60.

<sup>24</sup> Customs duties were increased in 1925–26 to compensate for the abolition of the business and income taxes on Europeans. The export tax on copra, though reduced during the prosperous year of 1928, became burdensome to the planters during the depression, as the price of copra fell. In 1931, they demanded the removal of this duty. *Ibid.*, 1927–28, p. 42; *Australian Parl. Debates*, p. 4604 (July 29, 1931).

<sup>24a</sup> See note 22 *supra*.

<sup>25</sup> These duties were raised in 1931–32 as part of the attempt to make the territory self-supporting.

is the business tax, while the salary tax on Europeans is a direct tax not found in other Dominion mandates. Rather heavy direct taxation of the natives<sup>26</sup> to cover expenses of medical treatment was one of the native grievances leading to the *Mau* disturbances. In 1929, as a consequence of the *Mau*'s passive resistance, direct taxation of the natives was abolished and the copra export tax increased, as a compensatory measure.

During the early period of mandatory administration, South-West Africa was really self-supporting, as it received no loans or subsidies from the mandatory. Since 1926-27, however, when the borrowing from South Africa began, South-West Africa's public debt has mounted rapidly, especially in the depression, until the total of £1,827,715, in 1932, far exceeded that of any other Dominion mandate. In 1930-31 and the following year, South-West Africa had to borrow from South Africa in order to meet its budget deficit, a situation which aroused the concern of the Permanent Mandates Commission.<sup>27</sup> The South African government has granted no subsidies to the territory for native welfare, but it has granted £500,000 for the settlement of the Angola Boers in the territory. Mining revenues, especially the diamond tax, were formerly the most important in South-West Africa, but since 1926-27, customs and excise duties have taken first place. A dog tax levied on all inhabitants, but proving most burdensome to the natives, was one of the grievances leading to the Bondelzwart rebellion of 1922.<sup>28</sup> Natives on reserves pay grazing fees per head of stock, which are allocated to the native reserve funds.

All of the Dominion mandatories are carrying on welfare programs for the inhabitants of their mandates, but with varying degrees of success, depending upon differences in the size and wealth of the territory, the amount of the financial subsidy (if any) granted by the mandatory, the ability of the public servants, and the attitude of the natives. Since Nauru is a small and wealthy territory with a native population of com-

<sup>26</sup> £2 per *matai*, or head of a family, and £1,16s. per *taulealea*, or young man, in 1926.

<sup>27</sup> Prior to the depression, loans were made principally for settlement of Europeans and for water-boring. In 1930-31, the budget deficit covered by loan was £120,000 and in 1931-32, £242,000. At a meeting of the Permanent Mandates Commission in June, 1933, Professor Rappard noted that a large part of the advances made by South Africa to South-West Africa had to be used to meet interest charges on the territory's debt. Unless the situation should improve, he feared that the territory would soon be bankrupt. Mr. te Water, accredited representative of South Africa, replied that Mr. Rappard had not exaggerated the situation. Permanent Mandates Commission, *Minutes*, XXII, pp. 31, 369; XXIII, pp. 85, 86, 192; *Report on Administration of South-West Africa*, 1931, p. 14; 1932, pp. 13-15. See note 22 *supra*.

<sup>28</sup> The administration's custom of making the natives pay for branding irons retained by the administration has been another native grievance.

paratively high mental caliber, the health, educational, and recreational program there has been very completely developed without direct subsidy from the mandatory. For the large territory of New Guinea, the Australian government has undertaken a program, less ambitious, but still adequate, considering the size of the territory and the low grade of native mentality. Despite an annual subsidy of £10,000 from the Australian government for native welfare until the year 1930-31,<sup>29</sup> fulfillment of the welfare program has, unfortunately, been hampered by lack of funds and of a sufficient number of trained officials. If, however, the well organized cadet system of training is maintained, the supply of expert public servants should increase. Despite financial difficulties, which are likely to exist during the depression, Major Casey asserted in the Australian Parliament, on November 2, 1932, that expenditure for health in New Guinea was much greater than in any foreign or even British colony.<sup>30</sup>

The New Zealand government was at first apparently successful in its attempt to carry on a comprehensive Samoan welfare program, financed in part by a subsidy of £20,000 given annually until 1931-32. In 1926, however, the Samoans, a fairly intelligent but unstable people, were so antagonized by the administration's zealous efficiency, especially in its health program, that, at the instigation of unscrupulous half-castes, a large number of them refused to coöperate with the administration, and even actively resisted it until 1930. The administration found it necessary to alter some features of its program and abandon others before it could secure even a moderate amount of coöperation from the recalcitrant members of the *Mau*. Welfare expenditure in Samoa decreased a little in 1931-32, because of the depression, but, fortunately, the Rockefeller Foundation agreed, in 1932, to help support a medical campaign against yaws.<sup>31</sup>

In contrast to the New Zealand government, the South African government has not erred in proceeding too rapidly with its welfare program in South-West Africa, but has rather been criticized by the Permanent Mandates Commission for shortage of medical staff and inadequate educational facilities for the natives. Though the government granted and loaned large sums of money for European settlement in the territory prior

<sup>29</sup> The grant was cut to £5,000 in 1930-31 and omitted the following year. There was a decrease in expenditure for health, education, and agriculture in 1930-31, as compared with the previous year, and a further decrease in 1931-32. *Report on Administration of New Guinea*, 1930-31, pp. 28, 32, 78, 82; 1931-32, pp. 30, 33, 81.

<sup>30</sup> *Australian Parl. Debates*, p. 1774 (Nov. 2, 1932). In 1931-32, £59,365 were expended in New Guinea for health. *Report on Administration of New Guinea*, 1931-32, p. 33.

<sup>31</sup> *Report on Administration of Western Samoa*, 1931-32, pp. 19, 25. Permanent Mandates Commission, *Minutes*, XXII, p. 78.

to the depression, it has never subsidized the native welfare program, which also lacks the hearty support of the European inhabitants of the territory. Despite these handicaps, however, the administration has made appreciable progress, during the last few years, in its health and educational work for the very backward and often uncoöperative natives. South-West Africa has been so severely affected by the depression that a decrease in welfare expenditure was inevitable. It is noteworthy that expenditure for native education actually increased in 1930-31 and the year following. But as the financial situation in the territory became more acute, appropriations for native welfare, including education, were reduced in 1932-33.<sup>32</sup>

With regard to labor conditions, indentured labor regulated by the administration exists in every Dominion mandate except Western Samoa. In Nauru, Chinese indentured laborers are employed by the British Phosphate Commission, while the Nauruans live in comparative comfort upon the income from phosphate royalties. In Western Samoa, the Chinese laborers on the plantations are no longer indentured, though they are still under the supervision of the administration, while the Samoans seldom work for wages. The labor situation is apparently more satisfactory in these territories than in New Guinea and South-West Africa, where native indentured labor is employed in the mines and on the plantations or farms. Though indentured natives constitute but a small fraction of the total population in each of the two territories, there have been abuses of the system which the administrations have tried to remedy under the supervision of the Permanent Mandates Commission. Methods of recruiting have been reformed, and the extremely high mortality among laborers in the South-West African mines has also been reduced, through the collaboration of the mandatory and the Commission. Contraction of economic activities during the depression caused a decline in the number of indentured laborers, particularly in South-West Africa, where mining operations were virtually suspended in 1932.<sup>33</sup>

The relationship between the Dominion mandatories and the supervisory organs of the League of Nations, namely, the Permanent Mandates Commission, Council, and Assembly, has, in general, been one of co-operation, though for a time there was misunderstanding and friction between South Africa and the Permanent Mandates Commission. The annual reports of the mandatories to the Council have gradually im-

<sup>32</sup> In 1931-32, £14,604 was spent on native education, as compared with £13,123 the previous year. Total educational expenditure in 1931-32 was £132,973. *Report on Administration of South-West Africa, 1931*, pp. 12-21; 1932, pp. 13-15.

<sup>33</sup> *Report on Administration of Nauru, 1931*, p. 7; *Report on Administration of New Guinea, 1930-31*, p. 23; *Report on Administration of South-West Africa, 1931*, pp. 67, 68; 1932, pp. 30, 31.

proved as the mandatories have adopted suggestions made by the Commission. Relations between the Commission and the accredited representatives of the mandatories who are present at the Commission's examination of the annual reports have, for the most part, been frank and cordial. On many occasions, the mandatories have sent important officials from the mandated territories as accredited representatives or as advisers to those representatives, thus enabling the Commission to secure much valuable information in addition to that contained in the reports. During the depression, the mandatories have discontinued this practice, doubtless for the sake of economy.<sup>34</sup>

As the authoritative supervisory organ of the mandate system, the Council has, almost without exception, accepted the advice of the Permanent Mandates Commission, and has forwarded the Commission's observations to the mandatories. Requests of the Commission for information, forwarded through the Council, have been answered by the mandatories, often in detailed annexes to the annual reports. In the case of South-West Africa, however, there has been considerable delay in forwarding information or opinions of the South African government desired by the Commission. The subject of mandates is considered annually by the Assembly, which, though giving audience to opinions and grievances of the mandatories, tends to support the work of the Commission and Council. Through supervision by these organs of the League, high standards of mandatory administration have been established and in large measure maintained.

As for the mandatories' conception of the mandate system, the Dominion mandatories expect to administer their mandates indefinitely (except in the case of Nauru, which might be transferred to Great Britain or New Zealand), but nowhere except in South Africa have official claims of annexation and sovereignty been asserted. The South African government finally acquiesced in a report of the Council stating that the term "sovereignty" is not suitable to define the relationship between mandatory and mandated territory. There is a good deal of discussion among the white population of South Africa and South-West Africa with regard to incorporation of the mandated territory in the Union of South Africa, but feeling between Germans and South Africans in the territory has prevented any decisive step in that direction. Members of the Permanent Mandates Commission, concerned for the welfare of the large native majority in South-West Africa, inquired of Mr. te Water, South African representative, in 1932, why a change in the status of the territory was

<sup>34</sup> At the 1932 session of the Permanent Mandates Commission, Mr. te Water, South African representative, expressed the regrets of his government that the depression prevented the sending of a South-West African official to the Commission that year. Permanent Mandates Commission, *Minutes*, XXII, p. 20.

sought. Mr. te Water quite frankly replied that one important factor in the case was the uncertainty regarding the political future of the territory, which caused a scarcity of capital for investment.<sup>35</sup>

Critics may say that there is little difference in fact between indefinite administration and annexation, but so long as supervision of the mandate system by the League and the resulting publicity continue, the mandatories will doubtless maintain much higher standards of administration than the minimum standards tolerated in colonial possessions by world public opinion. Thus the mandate system is clearly advantageous for the inhabitants of mandated territories, especially the native inhabitants, even though not all of the high-sounding phrases of Article 22 of the Covenant of the League are completely fulfilled.

LUCRETIA L. ILSLEY.

*Newburyport, Mass.*

<sup>35</sup> *Ibid.*, XXII, pp. 23-25.

NEWS AND NOTES  
PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

By vote of the Executive Council, the thirtieth annual meeting of the American Political Science Association will be held in Chicago on December 27-29. The American Economic Association and numerous other social science organizations will be in session in the same city during the period. The committee on program for the meeting of the Political Science Association consists of Walter R. Sharp (chairman), University of Wisconsin; Louise Overacker, Wellesley College; Harold D. Lasswell, University of Chicago; Lent D. Upson, Detroit Bureau of Municipal Research; and Amry Vandenbosch, University of Kentucky. Suggestions may be sent to any of these persons.

Professor Leonard D. White, of the University of Chicago, and a member of the board of editors of this REVIEW, has been appointed a member of the United States Civil Service Commission.

In recognition of his thirty years of service at the University of Illinois, Professor James W. Garner was tendered a dinner by his colleagues and friends on the evening of April 13.

Professor Roland S. Morris, of the University of Pennsylvania, and former United States ambassador to Japan, announced in February that he would be a candidate for the Democratic nomination for United States senator.

At the annual Commemoration Day exercises held at the Johns Hopkins University on February 22, a portrait of Westel Woodbury Willoughby, emeritus professor of political science, was presented to the University. The presentation was made by Professor James Hart.

Professor Morris B. Lambie, of the University of Minnesota, is acting as coördinator of public relief work, federal and state, for Minnesota. He has been relieved temporarily of a portion of his teaching duties, which are being cared for by Mr. Asher N. Christensen.

During the absence of Professor Russell Forbes while serving as commissioner of purchase of New York City, Professor Roy V. Peel is acting as chairman of the Division of Research in Public Administration at New York University.

At the mid-year convocation of the University of Pennsylvania for the awarding of degrees, the address was delivered by Dr. John Dickinson, professor of law at the University, and at present occupying the post of

assistant secretary of commerce at Washington. Dr. Dickinson also delivered an address, on "The Ordeal of Liberalism," at the Commemoration Day exercises of the Johns Hopkins University on February 22.

Professor A. R. Hatton, of Northwestern University, is a member of a sub-committee of the executive committee of the Chicago Recovery Administration, dealing with the reorganization of the local government of Chicago.

Under the auspices of the division of humanities of the California Institute of Technology, Dr. Charles A. Beard delivered four lectures at Pasadena during the period February 6-16. The general subject was "What are National Interests?"

Mr. Carl H. Chatters, executive director of the Municipal Finance Officers Association, has been appointed a member of the board of review of the Federal Emergency Administration of Public Works.

Professor Clarence A. Berdahl, of the University of Illinois, will give courses in international law and organization at Columbia University during the coming summer session.

Professor Walter R. Sharp, of the University of Wisconsin, will give courses on public administration at Harvard University during the first half of the next academic year.

Dr. Joseph D. McGoldrick, professor of municipal government at Columbia University, is occupying the post of deputy comptroller of New York City.

The Frank Hoyt Wood lecture in political science for 1933-34 at Hamilton College was delivered on February 14 by Professor Walton H. Hamilton, of the Yale Law School, on the subject of "The Supreme Court and Its Place in the Economic Order."

Dr. Ernest B. Price, on leave of absence from the Johns Hopkins University, has accepted a temporary appointment with the Institute for Government Research. He is making a preliminary study of regional administrative areas.

Mr. Charlton F. Chute, of the University of Chicago, has been appointed finance examiner in the Public Works Administration.

Mr. Lewis Meriam, of the Institute for Government Research, has been acting for some months as manager of the Washington office of the Public Administration Clearing House.

Mr. Charles S. Ascher, assistant director of the Public Administration Clearing House, has been elected director of the National Association of Housing Officials, with headquarters at Chicago.

Professor S. E. Leland, of the University of Chicago, and Mr. Paul V. Betters, secretary of the American Municipal Association, served as members of a special committee appointed by the Secretary of the Treasury to advise on a federal bankruptcy act.

Dr. Roger V. Shumate, who received his degree at the University of Minnesota last July, has been appointed instructor in political science at the University of Pittsburgh.

Dr. Max R. White, who recently received his degree at the University of Chicago, is assisting Professor Charles E. Merriam in his studies of regional planning.

Dr. Clarence E. Ridley and Mr. Orin F. Nolting, of the City Managers Association, have prepared a brochure on the city managership as a profession. It will be published by the University of Chicago Press.

Dr. J. Donald Kingsley, who received his degree at Syracuse University last year, has become assistant professor of political science at Antioch College and is engaged upon a study of county reorganization in Ohio.

The department of political science at the University of Minnesota is planning an International Affairs Week for the period July 30 to August 3. Lectures and round tables will be devoted primarily to the attitude of the Northwest toward international affairs and to problems involved in the teaching of international relations in the secondary schools.

Two research projects recently brought to completion under the auspices of the Institute for Government Research of the Brookings Institution are: Election Administration in the United States, by Joseph P. Harris, of the University of Washington; and The Veterans' Administration, by Gustavus A. Weber and Laurence F. Schmeckebier, of the Institute staff.

The spring meeting of the Academy of Political Science (New York City), on March 21, was devoted to the general subject of money and credit in the recovery program.

Hon. Frederick M. Davenport, professor of law and political science at Hamilton College for sixteen years and more recently a member of Congress from New York, is visiting professor of political science at Wesleyan University, where he is offering two courses on comparative government.

Professor Kenneth O. Warner, of the University of Arkansas, has been chosen chairman of the Arkansas People's Conference on Government, which will devote its activities during 1934 chiefly to promoting the modernizing of county government. The first definite objective is to curb the fee system of paying county officials and secure the adoption of a model salary act.

During the first term of the Academy of International Law at The Hague, July 2-28, Professor John B. Whitton, of Princeton University, will lecture on the rule *pacta sunt servanda*, and during the second term, July 30 to August 24, Dr. Leo S. Rowe, director of the Pan American Union, on the seventh Pan American Conference. The program of each term lists, as usual, seven or eight European lecturers.

During the second semester of the current year, Professor Hermann Kantorowicz, formerly of the University of Freiburg and now a member of the Graduate Faculty of Political and Social Science organized under the New School for Social Research, is lecturing at the College of the City of New York on the subject of his primary interest, the philosophy of law.

The Iowa Political Science Association will hold its annual convention at Grinnell College on May 4 and 5. Tax revision in Iowa, certain problems of local government, the content of elementary political science courses, and national versus international economy are topics listed on the program. The officers of the Association are: J. W. Gannaway, of Grinnell College, president; Ivan L. Pollock, of the State University of Iowa, vice-president; and Erma B. Plaehn, of the University High School, secretary-treasurer.

The seventh annual session of the Institute of Citizenship, held at Emory University on February 12-16, was devoted largely to discussion of the New Deal, in relation to state and local government, industry, banking, the consumer, and other activities and interests. Professor Cullen B. Gosnell, of Emory, served as director.

A National Committee on Municipal Accounting, organized at Chicago in January, represents the first attempt on a national scale to establish accepted principles of municipal accounting and actively to promote their use. Ten members represent as many different national organizations interested in accounting practice. As secretary of the committee, Mr. Carl H. Chatters, director of the Municipal Finance Officers' Association, has set up a full-time staff to carry on the committee's work.

As an outlet primarily for the scholarly work of the Graduate Faculty of Political and Social Science lately established under its auspices, the New School for Social Research has established a quarterly journal bear-

ing the name *Social Research*. The initial issue, appearing in February, was devoted entirely to leading articles by members of the group indicated. It is announced, however, that future issues will contain notes and book reviews, and will draw upon a wider range of scholarship.

Beginning with the number for March, 1934, *Pacific Affairs*, a publication of the Pacific Council of the Institute of Pacific Relations, will be issued from New York instead of from Honolulu, and under the editorship of Mr. Owen Lattimore, with the aid of an international corps of editorial correspondents. It is announced that the magazine will hereafter be devoted more particularly to the "exploration of derivations and potentialities of those situations in the Pacific area which give rise to international conflict." The subscription rate will continue to be \$2.00 a year, and the editorial and business offices will be located at 129 E. 52nd St., New York City.

Financed through a grant of the Rockefeller Foundation and appointed by the Social Science Research Council with the endorsement of President Roosevelt, a recently created Commission of Inquiry on National Policy in International Economic Relations announces its purposes as being (1) to examine the situations in the United States in which practices and principles of nationalism and internationalism bear on national policy in international economic relations; (2) to canvass the directions and objectives of American policy, and their results; and (3) to make a report presenting an analysis of the problems involved, together with relevant recommendations. The commission is headed by President Robert M. Hutchins, of the University of Chicago, with Professor Alvin H. Hansen, of the University of Minnesota, as secretary.

With more than a dozen western or national organizations participating, a Western Conference on Government held at the University of California on March 28-30 was expected to be the most important meeting of its kind ever arranged for west of the Mississippi. Among topics to be dealt with by over one hundred speakers in general and group meetings were problems of metropolitan government and organization, legislative drafting and research, municipal finance, taxation, public personnel, the relationships between federal, state, and local governments, local government aspects of the New Deal, unemployment relief, public aid to housing, and special assessments. The chairman of the local arrangements committee was Professor Samuel C. May, director of the Bureau of Public Administration at California.

At New York University, the Division of Research in Public Administration has completed a plan for charter revision in New York City. In general, the plan calls for administrative centralization and integration

through a unicameral legislature elected by the method of proportional representation, and for a thorough overhauling of the revenue and personnel services and the courts. Practically all members of the political science faculty participated in the project, with Mr. John Bauer, of the American Public Utilities Bureau, acting as consultant. The plan has been submitted to Mayor LaGuardia, and a limited number of copies are available for distribution.

The program of broadcasts from mid-April in the current You and Your Government series on "Reviving Local Government" is as follows:<sup>1</sup>

- April 17. *From the Heart of the Depression*  
Mayor Frank Couzens, Detroit  
Arthur J. Lacy, Attorney  
Arthur W. Bromage, University of Michigan
- April 24. *Local Government and the New Deal*  
Dr. William T. Foster, Consumers Advisory Board  
Harold D. Smith, President, American Municipal Association
- May 1. *Suburban Troubles*  
Walter R. Darby, State Auditor, New Jersey  
E. F. Dunstan, Chairman, Municipal Securities Committee,  
Investment Bankers Association of America  
Arnold Frye, Attorney, Hawkins, Delafield, and Longfellow
- May 8. *Chicago Over the Hump*  
John O. Rees, Secretary, Committee on Public Expenditures  
Robert B. Upham, City Comptroller
- May 15. *Schools for Municipal Officials*  
Mayor J. Boyd Thacher, Albany, N. Y.  
Albert H. Hall, Director, Bureau of Training, New York  
Conference of Mayors  
Morton L. Wallerstein, Director, Virginia League of Municipalities
- May 22. *News From the South*  
Mayor J. Fulmer Bright, Richmond, Va.  
Hon. William B. Harrison, Former Mayor of Louisville, Ky.
- May 29. *The National Administration and Local Reorganization*  
George F. Milton, President and Editor, *The Chattanooga News*

<sup>1</sup> The broadcasts take place over a nation-wide network of the National Broadcasting Company every Tuesday evening at 7:15 Eastern Standard Time (beginning May 1, Eastern Daylight Saving Time).

Arnold B. Hall, Director, Institute for Government Research,  
Brookings Institution

- June 5. *The Schools in Local Revival*  
George F. Zook, United States Commissioner of Education  
C. R. Mann, Director, American Council on Education
- June 12. *The Voter and Local Revival*  
Miss Katharine Ludington, Chairman Finance Committee,  
National League of Women Voters  
Frank R. Kent, Vice-President, *The Baltimore Sun*
- June 19. *What Are the Prospects?*  
Thomas H. Reed, Chairman, Committee on Citizens' Coun-  
cils for Constructive Economy  
Frank H. Morse, Lehman Bros., New York City  
Howard P. Jones, Secretary, National Municipal League

## BOOK REVIEWS AND NOTICES

*The Menace of Fascism.* By JOHN STRACHEY. (New York: Covici Friede. 1933. Pp. 272.)

The author of this interesting, but unconvincing, book is himself convinced that an attempt by the capitalist class to abolish the democratic form of government and to establish a fascist dictatorship is inevitable everywhere. "America," he writes, "though she may well have several phases to pass through in the meanwhile, will not be exempt from this phenomenon." In another place he is even more explicit. "The unfolding of the crisis in American economy," he declares, "will inevitably give birth to a form of fascism."

This prediction gains significance from the author's definition of fascism. Briefly, it is the "movement for the preservation of capitalism by violence and terror." The preservation of the private ownership of the means of production, and nothing else, he insists, is the real purpose of fascism. According to this view, moreover, there can be no such thing as a constitutional fascist movement. The resort to intimidation and violence is essential. Doubtless other definitions of fascism are possible. I would myself prefer a somewhat different definition. But the author's definition is practical as well as clear, and, since he uses it consistently throughout his book, there is little excuse for contentiousness on the matter. The main point is that fascism, in Mr. Strachey's opinion, will be the last defense of the capitalists and whatever will ensure its defeat will consequently ensure also the triumph of socialism.

Mr. Strachey's mode of proving these propositions leaves a good deal to be desired. Much of the proof, indeed, is omitted from this volume and must be sought in the author's previous work, *The Coming Struggle for Power*. His real concern here is to show that the proper method of combatting fascism is by determined attack upon the capitalist system at all costs, in bad times as well as in good. He blames the German Social Democrats for compromising with capitalism during the depression, thus paving the way for the destruction of their own "social-fascist" movement, and predicts that the British Labor party will suffer the same fate if it continues to pursue the same tactics. But he fails to show that the Labor party cannot defend the democratic political system against the menace of fascism without going to the opposite extreme along with the Communists. He seems indeed to ignore the possibility that the fascist menace, as he defines it, may be chiefly a menace to the Communists, in whose fate he is primarily concerned, and much less menacing to the more moderate movements which he dubs "social-fascist," like the British Labor party and the Roosevelt movement for a new deal. And so when he asserts that "the passionate hopes of the American people" in op-

portunistic policies of social readjustment "are doomed to be in the end most bitterly disappointed," the non-Communist reader will note the assertion and await the event with much more equanimity than Mr. Strachey.

ARTHUR N. HOLCOMBE.

*Harvard University.*

*English Political Thought in the Nineteenth Century.* BY CRANE BRINTON.  
(London: Ernest Benn Limited. 1933. Pp. vii, 311.)

For the accomplishment of a difficult task, the author of this book has adopted the "method of men." He rejects, on the one hand, the "method of ideas" as "offering less resistance to easy generalization," and on the other, the composite method appropriate only for a more complete history of nineteenth-century English political thought than he deems possible at such short range. The "method of men," moreover, "finds ideas in their natural source, in the living human being." But most particularly is this method pursued, we are led to believe, because the nineteenth century is, of all centuries, probably the most difficult to summarize. "The nineteenth century is almost perversely resistant to attempts to define it." It is a "warring ground of political doctrines," in which "no great simplifying categories are readily available," and in which "there seem to be as many ideas as men."

This characteristic of the century is well reflected in the book; for in spite of the grouping of the nineteen thinkers chosen under three headings—The Revolution of 1832, Chartism, and The Prosperous Victorians—the impression is that of nineteen separate studies, bearing little relation to each other. The inclusion of a number of less accustomed names reveals the political thought of the century in some of its less obvious implications. In the chapter on the Revolution of 1832, Mr. Brinton presents Bentham, Brougham, Owen, Cobbett, and Coleridge; in that on Chartism, Mill, Cobden, Kingsley, Disraeli, Newman, and Carlyle; while he has chosen as his Prosperous Victorians, Bagehot, Acton, T. H. Green, Spencer, Bradlaugh, Morris, Maine, and Kidd.

Though these studies are compact of information, and vivid through much quotation, their value lies not in new material presented, nor in illuminating comment, but rather in the fact that now for the first time the ideas of so many representatives of nineteenth-century English political thought are brought together into a single volume. We are not, moreover, left entirely without direction for the understanding of the century as a whole. The notion that "a new England was in the making," and the determination that "this new England should be a good one for Englishmen," which we are told in the Conclusion run through all English political thought in the nineteenth century, are made evident in the

several systems here presented, however various their specific programs for reform. And as closely related to these concepts we are made aware of the familiar nineteenth-century emphasis on history and on progress.

The book is well documented, and has a useful bibliographical appendix so arranged as tentatively to suggest a history of English political thought in the nineteenth century according to the method of ideas. The broad outlines here sketched, as well as the few interpretative suggestions offered in the Conclusion, lead one to wish that more of comment, and of such critical comparison as for instance appears in the work of Barker and of Laski, might have been introduced along the way. Such a procedure would, without prejudicing the method adopted, or the essential diversity of subject-matter, have simplified and clarified the mass of material presented, and would thus have added proportionately to the interest and usefulness of the book.

ELLEN DEBORAH ELLIS.

*Mount Holyoke College.*

*Government of the People.* By D. W. BROGAN. (New York: Harper and Brothers. 1933. Pp. 415.)

The appearance of this book is sufficiently important to deserve the attention of all students of the American constitutional system. Once more a British commentator has brought to the task a fresh and comprehensive view, not only of the machinery of our system, but of the living forces behind that machinery. One may be permitted, in the light of the work of Beard and other American scholars, to find Mr. Laski's praise, "the most illuminating treatise on American government since the late Lord Bryce's famous volumes," characteristically exuberant. But it is a solid, scholarly, and at times a brilliant, analysis of the development of the main factors in American politics.

Mr. Brogan has an Englishman's natural impatience with the clumsiness of our system, with its reliance on judicial review and on checks and balances, rather than upon direct political responsibility through the unified methods of British parliamentary government. But he tempers his impatience with the shortcomings of our system by a thorough knowledge of the historical factors which have produced them. In fact, it is on the plane of topically selected American political history that this volume deserves to be called really distinguished. Mr. Brogan has absorbed, as few Englishmen, even including Bryce, ever have done, a real feeling for our political history.

It is difficult to select from the subjects treated sections of special excellence, for the general level is very high. But few treatments of party and civil service in the United States, done in the same scope, can stand comparison with Mr. Brogan's. One can say that he is a little diffuse in

his treatment of the presidency and less than adequate in his analysis of the nature of "pressure politics." But his emphasis on "the endemic sectionalism of American politics," and his lucid analysis of the spoils system, ought to make up for any weaknesses in the later chapters which deal more specifically with political machinery and problems.

The book had the misfortune to come out before the New Deal was under way. Much of Mr. Brogan's analysis might seem to have been swept away by that political freshet. But after all, the features of the system that he criticizes still remain to plague us. And the very tempo of the Rooseveltian reforms indicates a dangerous impatience with an unworkable system.

Mr. Brogan's specific proposals for reform seem either unnecessary or so minimal in their probable effects as to be inadequate. He proposes as his most radical remedy to have the President equipped with the power to call a referendum on a measure on which he is balked by Congress. For some curious reason, possibly because of the Model State Constitution, he makes the statement (p. 382): "This power has already raised the state governor from a figure-head to a public servant who can, if he will, do things worth doing."

In spite of occasional errors of this sort, forgiveable enough though surprising in the light of the extraordinary range and accuracy of Mr. Brogan's knowledge of American history, this is a work that ought to supplement, even if it does not supplant, the older texts on American government. There is more bold thinking and sound analysis of politics in it than in any of them that I know.

WILLIAM Y. ELLIOTT.

*Harvard University.*

*City Management: The Cincinnati Experiment.* BY CHARLES P. TAFT.  
(New York: Farrer & Rinehart. 1933. Pp. viii, 275.)

The author cautiously refers to his subject as an experiment, while the publishers call it the story of a permanent reform. In the light of our municipal experience, however, one gives a considerable hostage to fortune in predicting that any American city will stay permanently regenerated. Ten years ago, Cincinnati was one of the worst governed cities in the nation. There is no doubt about that. Today it has risen to a place among the best. Mr. Taft's story proves that the transformation was not wrought by magic, but is the outcome of persevering effort on the part of an undaunted body of citizens who combined sound ideals of government with a high degree of political sophistication.

The city of Cox and Hynicka was not the easiest place in the world for a reform movement to get fairly started. But Cincinnati had an extraordinary group of forceful reform personalities in its Bentleys, Season-

goods, Tafts, Bettmans, and the rest. The author of the present volume was one of them, and although his attitude towards the city manager plan was rather skeptical at the outset, he presently developed the characteristic enthusiasm of a convert. His book might well be called a decade of autobiography, although he keeps his own activities modestly in the background. Some of Mr. Taft's friends suggested that the volume be left unpublished until after his death, but a multitude of readers will be glad that he did not hearken to such counsel. For here is material of the greatest value to all students of political science everywhere, an exciting story of a partisan machine outgeneraled and outfought all along the line.

The successive steps in the campaign have been narrated in many publications during the past decade, and most of those who follow the sinuosities of American municipal politics are quite familiar with them. Hence there is no need to give a summary of them here. Cincinnati has assuredly not lacked publicity concerning its New Deal during recent years. The question is whether there has possibly been too much of it. The general lesson of Mr. Taft's book, however, is that the smashing of a political machine requires an organization which is definite in its aims, sincere in its purposes, high-minded in its personnel, and steadily on the job year after year. It is only in this way that citizen interest can be aroused and kept vigilant.

What has been accomplished in Cincinnati is not merely a triumph of the city manager plan. This new scheme of municipal government gave the crusaders a rallying point and simplified their problem of putting efficiency into the city's administration, but no entrenched political machine could ever have been worsted in five successive elections by a plan alone. It was the momentum behind the plan that counted and has continued to achieve the results.

It is no disparagement of other fine qualities to say that the best feature of this book is its style. Vivid and cogent, with occasional flashes of good natured satire, it makes fine reading. The author ought to write more, for he has the gift of making a tale of local politics sound like an Arthurian adventure.

WILLIAM B. MUNRO.

*California Institute of Technology.*

*The Roosevelt Revolution.* BY ERNEST K. LINDLEY. (New York: The Viking Press. 1933. Pp. viii, 328.)

*Roosevelt and His America.* BY BERNARD FAŸ. (Boston: Little, Brown and Company. 1933. Pp. vii, 345.)

*The Future Comes.* BY CHARLES A. BEARD AND GEORGE H. E. SMITH. (New York: The Macmillan Company. 1933. Pp. xii, 178.)

These three books discuss the events of the first few months of the Roosevelt Administration. That much they have in common. They are all alike also in being written in a spirit of adulation. No critical appraisement of the period is undertaken in any one of the books, save in certain respects in the book by Beard and Smith. To Lindley, the "extraordinary accomplishments in seven months" give obvious title to his volume, *The Roosevelt Revolution*. To Faÿ, Roosevelt is "the greatest living politician," a phrase that fairly indicates the tone of his entire book. To Beard and Smith, "the future comes" with Roosevelt.

Each of these books has a value of its own. The Lindley volume gives certain historical aspects of the New Deal as only a newspaper reporter could give them, and that a reporter close to the incidents and also close to the President himself. Mr. Lindley was assigned as reporter to news from Albany when Mr. Roosevelt was governor. He followed the intimate details of the presidential campaign. His account, therefore, has all the value of a book written on the spot and under the stress of the times. The author himself points out that "the book is tentative." But as such it serves a useful purpose in marshalling rapidly moving events into a unity of interpretation.

M. Faÿ writes as a Frenchman well informed on American affairs. "My first aim and hope in writing this book," he says, "was to remind Europeans that America is a force, not a formula." In this service he succeeds admirably. He writes of the continuity of American life and of the energy of its actions at critical hours. He first takes a look at America's ancestors: "those colonial, puritan, romantic traditional Americans, from which she is sprung and whose blood courses in her veins." He surveys the period of the three "wooden kings": Harding, Coolidge, and Hoover. He then discusses the "emancipated, liberal, slightly fantastic America" of the New Deal. The style is sprightly, and the author's interpretations quite worth while.

*The Future Comes* bears the hall-mark of a brilliant mind that is Charles A. Beard's and the hard work of George H. E. Smith. The authors present the salient facts of, and their interpretations of, the five broad fields into which the Recovery Program "seems to fall logically": government, industry and transportation, agriculture, finance, and relief. The book is full of facts, but made readable by a lucid style and a masterful interpretation.

To the reviewer, the Beard book presents the keenest analysis of the principles and ideals underlying the Recovery Program. The ideals are expressed in substance in the words of the President himself: Recovery "can be helped by national planning for and supervision of all forms of transportation and of communications and other utilities which have a definite public character." Again, "No business which depends for

existence on paying less than living wages to its workers has any right to continue in this country . . . and by living wages I mean more than a bare subsistence level—I mean the wages of decent living." Yet again, a lasting prosperity cannot be attained "in a nation half boom and half broke. . . . The two great barriers to a normal prosperity have been low farm prices and the creeping paralysis of unemployment." Finally, "The secret of the N.R.A. is coöperation." The ideal to attain is "a common participation in the work of remedial measures, planned on the basis of a shared common life."

The present need is for a critical analysis of the extent to which the methods thus far adopted have and have not really helped in carrying out those ideals.

CLYDE L. KING.

*University of Pennsylvania.*

*Treaties Defeated by the Senate.* By W. SHULL HOLT. (Baltimore: The Johns Hopkins Press. 1933. Pp. vi, 328.)

The Senate's rejection of the treaty of Versailles resulted in many heated denunciations of that body and of its rôle in the making of treaties. Old sores were brought once more to the attention of the American public and many reforms suggested with a view to depriving the Senate of its coördinate power in treaty-making. In the interim since those first heated criticisms, scholars have turned their attention to more careful studies of the treaty-making procedure. Students have time and again pointed to the fact that the Senate has sometimes rejected treaties for reasons that have nothing to do with the wisdom of the foreign policy presented in the treaty. Everyone knows that a good many of these extraneous reasons can be traced either to the struggle between the President and the Senate for the control of treaty-making or to the warfare of the President's political opponents who hope to secure some partisan advantage. For the first time, the author of the present volume has examined the circumstances attending the defeat of every treaty that failed to come into force because of Senate action or inaction. In each instance, the cause of defeat is carefully set forth and the political reasons for the defeat assessed against the persons, groups, and institutions involved.

To students of American government and history, and to students of foreign policy, this volume will prove invaluable for the material which it presents. The author's extensive search in biographical materials has added much of the flavor of domestic politics to the whole field of foreign relations. The concluding chapter on the treaty of Versailles is particularly informing—not because of new material introduced, but for the convincing summary of much evidence and a complete portrayal of events, persons, and groups which shaped the Senate's action on that

agreement. The volume offers much material to those interested in the personal and political antagonisms which have been so common in the process which Woodrow Wilson called "treaty-marrying."

Only two criticisms seem in order. The volume would have been more complete had the author drawn together all of his evidence into a concluding and summary chapter. Again, the author deals at length with those treaties which have been defeated because of partisan politics or because of the struggle between the President and the Senate for the control of treaty-making, but he dismisses with a word those treaties where neither of these forces accounts for the defeat. The title promises, and this reviewer would have appreciated greatly, a detailed discussion of those treaties defeated by the Senate because of their lack of merit or other non-partisan reasons. This omission leaves a suspicion that the author was looking for evil in the Senate—a suspicion, however, that is not otherwise justified.

All in all, this is the most scholarly study of defeated treaties yet published.

ROYDEN J. DANGERFIELD.

*University of Oklahoma.*

*Toward Liquor Control.* By RAYMOND B. FOSDICK AND ALBERT L. SCOTT.  
(New York: Harper and Brothers. 1933. Pp. xvi, 220.)

Although the demand for repeal of the Eighteenth Amendment was both general and insistent, very little consideration was given to control of the liquor traffic until after repeal became effective. The shift of public sentiment was so rapid that neither the federal nor the state governments were prepared to meet the situation. In order to point the way to sound methods of control, Messrs. Fosdick and Scott have prepared an admirable analysis of the problem, and have indicated the objectives to be sought and the methods of regulation which may succeed.

The immediate objective is the elimination of the bootlegger, which can best be accomplished if the price of legal liquor is so reasonable that he cannot compete. As a matter of social policy, the wide consumption of so-called hard liquor should be discouraged, but the desperate need of the national, state, and local governments for revenue will necessitate high taxes and increased cost to the consumer. To obviate this difficulty, a cogent argument is made for a high income or profits tax levied on the manufacturer, under which it would be possible to combine a low retail price with a large revenue. The abolition of the private profit motive is likewise essential, and the authors believe that the various forms of licensing have proved unsatisfactory. A state alcohol authority is recommended, with broad powers over prices and conditions of sale. With reference to unified control and to taxation of the liquor industry, American federalism pre-

sents numerous difficulties. It is advocated that the manufacture of alcoholic beverages be taxed exclusively by the federal government in order to provide for uniformity and free competition, while those states not creating a control authority should tax liquor-sellers by low licenses and by high profits taxes.

This discriminating study is impartial and broadly tolerant. Six useful appendices, including an adequate bibliography, add materially to its value. The practical recommendations deserve the serious consideration of legislators and of others who, knowing well the old evils, hope that the new order will inaugurate a more effective social control.

THOMAS S. BARCLAY.

*Stanford University.*

*Letters of Grover Cleveland, 1850-1908. SELECTED AND EDITED BY ALLAN NEVINS. (Boston and New York: Houghton Mifflin Company. 1933. Pp. xix, 640.)*

This book should serve as a valuable companion and supplementary volume of Professor Nevins' prize-winning biography of Cleveland. The *Letters* cover the period from Cleveland's boyhood to March 24, 1908, three months before his death. As Professor Nevins himself has remarked, "the fullest commentary on these letters is provided by the author's recent book, *Grover Cleveland; A Study in Courage*" (p. vii).

Cleveland's honest independence stands out as his most marked characteristic. He was always, as he proclaimed himself, "an absolutely free man" (p. 16), and again and again asserted his principle that "personal advancement of man is nothing; the triumph of the principles we advocate is everything" (p. 294). So, too, the religious element in Cleveland was deep and strong, and in it he found steadfast support for what he believed to be right. Writing to his close friend E. C. Benedict, he proclaimed his belief in "a high and unseen Power that guides and sustains the weak efforts of man," and added: "I would be afraid to allow a bad, low motive to find lodgment in my mind, for I know I should then stumble and go astray" (p. 381).

Cleveland characterized himself as "by nature an undismayed and persistent fighter" (p. 439). His letters disclose the fact that he was frequently stirred to anger by actions which he regarded as ignoble, or by attempts to use public office for personal or private gain. At the same time, he resented charges that he lacked in appreciation of friendship and did not recognize sufficiently what others did for him. He declared that "no one is more delighted than I when friendship and public duty travel in the same way" (p. 465).

Friendships he did have, and the genial human side of Cleveland is best illustrated in the many letters to his friends regarding family affairs

or fishing. Deep affection for those dear to him and a boyish humor for his intimate friends are almost as characteristic of Cleveland as his sturdy integrity.

So fruitful of discussion are these letters and so limited the space for comment that this reviewer rests his case on a story which Cleveland related to Benedict: ". . . Concerning . . . political affairs, I feel like the farmer who started at the bottom of a hill with a wagon-load of corn and discovered at the hilltop that every grain of his load had slid out under the tail-board. Though of a profane temperament, he stood mutely surveying his disaster until to a passing neighbor, who asked him why he didn't swear, he replied: 'Because, by God, I cannot do the subject justice'" (p. 616).

The task of selecting and editing the letters has been well done and there seems to be little ground for questioning Professor Nevins' belief "that this book contains nearly all of Cleveland's letters that are important to the student of his life and times" (p. vi). A brief introductory statement to each chapter supplies the reader with a helpful biographical thread which runs throughout the volume.

EVERETT S. BROWN.

*University of Michigan.*

*The Constitution of the Irish Free State.* By LEO KOHN. With a foreword by the Chief Justice of the Irish Free State, the Hon. Hugh Kennedy. (London: George Allen and Unwin, Ltd. 1932. Pp. xv, 423.)

The reopening of the separatist controversy by the present government of the Irish Free State has made this comprehensive treatise on the constitution even more interesting and timely than it was when published several months ago. It is only fair to expect such a treatise to give a clear lead to the understanding of the important constitutional problems still in controversy, seeing that one had already been brought to an acute stage before the book was sent to press and others had long been foreshadowed. In this respect Dr. Kohn's analysis is defective, because he fails to take proper account of the effect of Section 2 (2) of the Statute of Westminster, and because he tends to neglect the British notion of Irish obligations under the treaty of 1921. It may as well be recognized that the separatist proposals are patently violations of the treaty. The repeal by the recent constitutional amendment of Section 2 of the Constitution Act of 1922, which gave legislative effect to the treaty in the Free State, was in the opinion of many itself a violation of the treaty. That question aside, important issues arise as to the legislative competence of the Free State under the terms of the Statute of Westminster.

Dr. Kohn's analysis of the articles of the Free State constitution is always clear and penetrating. His frequent brief but lucid statements of

portions of the constitutional law of other countries not only illuminate his main theme, but also are a valuable contribution to the literature of comparative government. With respect to each article he makes full use of the supplementary statute law and court decisions, and the utterances of Irish and British political leaders. The expositional part of the book, which of course is its principal *raison d'être*, is an excellent piece of work, and the author is especially to be congratulated upon his fluent use of a language foreign to him. It is necessary to point out only a few errors of detail. The declaration of a state of siege is not authorized by the French constitutional laws (p. 137). The British Parliament never used joint sittings of the two houses as a method of settling disputes (p. 197). It is not made clear that sixty days must elapse after the second passing of a bill by the Dáil before it can become law without the assent of the Senate (p. 200).

A useful feature of the book is a carefully edited text of the constitution, with the changes introduced by the first sixteen amending laws clearly indicated. The changes proposed to be made by the Removal of Oath Bill, which has since gone into effect without the assent of the Senate, are indicated. The passing of three more amendments, affecting Articles 37, 41, and 66, is part of the program of the present government.

Soon, then, the Free State constitution will have "suffered" (Professor Finer's *mot* on our own constitution) twenty-one amendments—oddly the same as the present number of amendments to the American constitution. Twenty-one amendments have been a good deal more destructive of the former, and they have come about in a much shorter space of time. Indeed it is difficult to recognize in the present Free State constitution the original academic and authoritarian document. All of its peculiar, experimental features are gone—the institution of extern ministers, the ambitious scheme for a second chamber, the initiative and referendum. The newer series of amendments will have as their purpose the severance of all ties with Great Britain. Paradoxically, the earlier series deleted from the Free State constitution almost all of the features which distinguished it from the British constitution, so that it is now little more than an imitation of the latter.

JOSEPH R. STARR.

*University of Minnesota.*

*Political Parties in the Irish Free State.* By WARNER MOSS. (New York: Columbia University Press. 1933. Pp. 233.)

This excellent study of political parties in the Irish Free State pushes forward the frontier of the field of party organization and methods, and thus assists in filling one of the voids in the literature of party govern-

ment. Professor Moss went to Ireland to observe politics in the making, and although his observations in the Free State were limited to about five months on two different occasions, his pages give ample evidence that he has inhaled the atmosphere of Irish political life and has interpreted it quite faithfully.

After an adequate introductory chapter which perhaps necessarily makes up about one-fourth of the book, the author presents a detailed picture of the organization of the three leading Irish parties. This part of the book is particularly well done and deserves special commendation. Chapters devoted to the organization and conduct of electoral campaigns follow, and four very useful appendices are also included.

Dr. Moss has thrown a great deal of light on various important phases of Irish political life. His description of nominating methods, although quite brief, is both interesting and new. His occasional observations about the operation and effect of proportional representation in the Free State are likewise well-considered and fair. His description of Irish political geography and of the foundations of party strength might well have been enlarged upon. On the other hand, his analysis of Irish Free State elections and of the positions of the parties in the electoral struggles which have thus far taken place is first-rate.

In nearly every phase of the subject he has so carefully preserved his impartiality and has so discriminately selected his material that one should not cavil at a certain meagreness of factual data on two or three points. With certain expressions of opinion, one might disagree. One might also point out a few slight mistakes. But, all in all, the work makes a distinct contribution to the study of comparative party politics and therefore brings us much nearer to an understanding of the functioning of political institutions. It has opened up another largely unexplored region of party politics.

JAMES K. POLLOCK.

*University of Michigan.*

*The Soviet State.* BY BERTRAM W. MAXWELL. (Topeka, Kansas: Steves and Wayburn. 1934. Pp. xvi, 383.)

In this volume, Professor Maxwell describes the state of Russia before the revolution of 1917 and the coming of the Soviets, and discusses citizenship, elections, the Communist party, municipal government, municipal finance and city planning, rural government, provincial government, organization of the central government, civil service and judiciary, administrative coercion, state liability and law enforcement, civil liberty, the church and the state, supervision of the press, police, supervision of economic and social life, labor legislation, women and children, social

evils, and the administration of educational, cultural, and health institutions.

The work is based on observation and on an extensive study of laws and decrees. It does not pretend to any profundity of thought, and it is in no sense a penetrating work of social or political significance. But, in general, one cannot admire too much the skill with which the mosaic is put together out of its thousand details. Thus, this is a scholarly book and an honest book, and one which shows the results of a great deal of hard work.

The author points out that "although this treatise deals largely with legal relationships, yet the realistic point of view has been followed consistently, without, it is hoped, falling into the all-too-common error of creating a purely impressionistic picture." But the fact remains that the actual verdicts which the author renders bulk small in proportion to the mass of carefully detailed evidence that he presents. This is probably due to the very small number of authoritative works cited by the author. He has used R. N. Baldwin, W. R. Batsell, E. H. Chamberlin, Hans von Eckhardt, S. N. Harper, C. B. Hoover, and other well-known authorities and critics. But we find no mention of the works of H. N. Brailsford, W. Gurian, A. Malinskii, N. N. Popov, A. Feiler, P. Scheffer, etc. In addition, the author keeps his own critical personality (and that of the others) too much in reserve, and is too dependent on the legalistic approach. This has led him too often to forget the actual application of theories in practice. Consequently, the book is a valuable summary of fact, even though it is an indication of investigation that needs to be done rather than a survey of what has been successfully accomplished.

But these shortcomings do not prevent the book from being one of the most helpful, interesting, and constructive of the recent crop in its field.

JOSEPH S. ROUČEK.

*Pennsylvania State College.*

*The Development of Social Insurance and Minimum Wage Legislation in Great Britain; A Study of British Social Legislation in Relation to a Minimum Standard of Living.* By HELEN FISHER HOHMAN. (Boston and New York: Houghton Mifflin Company. 1933. Pp. xxi, 441.)

Students of social politics find it valuable to turn again and again to the experience of Great Britain with the development of a national system of social insurance. It is now one hundred years from the New Poor Law of 1834, and yet the major social problem of Great Britain is to find work at a decent standard of living for her people. The brief recital of the table of contents of this book, awarded the Class A Hart, Schaffner, and Marx prize in 1928, will indicate both the historical background of the present social insurance policies in Great Britain and also the method the

author has used in this study. The slow and sure reform of British institutions, of which Trevelyan speaks, is the story of the heritage of the nineteenth century and explains the Liberal program of reform which was laid between 1905 and 1911. The author sets forth the story of changing attitudes in chapters which deal with a minimum standard for the aged poor, standards of assistance for widows with children, health insurance in relation to a minimum standard of living, provisions for the unemployed workman, the poor law and the right to maintenance in 1920-1931, and, finally, the Trade Board Acts in relation to a minimum standard of living.

The development of the various measures to combat the human and social waste of the industrial system is adequately given, but rightly the major emphasis is upon the post-war period and the terrible strain upon the whole structure of the British social insurance schemes. Prolonged unemployment and the cumulative effects of post-war world economic dislocation have made necessary changes in opinions and attitudes on the problem of poverty and unemployment relief by the state. It is this phase of the author's study that is a contribution to the growing literature on social legislation. The lack of a definite policy in the development of social insurance, the confusion in administration of the hundreds of acts, and the unpreparedness of public opinion for an adequate answer to the problems of old age and unemployment and low wages—all are made plain in the survey of post-war legislation and administration. Social legislation as a necessary part of national security, and the international aspects of trade and work and wages, have yet to be recognized by the lawmaker.

The experience of Great Britain has been valuable for all nations attempting to control their economic and industrial revolutions. But the experience of Great Britain with her whole system of social insurance proves that modern industrial nations are just at the beginning of the problems of welfare in the present economic order. Social legislation must necessarily be a larger part of governmental action if there is tolerable security for the worker and the nation in which he lives. In any society in which higher standards of living are to obtain, social legislation will be a dominant concern of lawmakers and workers. The breakdown of existing forms of industrial organization may hopefully direct attention to adequate measures of security for the worker.

CHARLES W. PIPKIN.

*Louisiana State University.*

*Le Gouvernement des Démocraties modernes.* By BERNARD LAVERGNE.  
(Paris: Félix Alcan. 1933. Two vols. Pp. 624.)

The crisis facing the régimes which have issued from universal suffrage

is daily becoming graver and more intense. Some parliaments have resigned themselves to the necessity of confiding their powers to cabinets endowed with extraordinary powers, while a number of dictatorships have been established upon the ruins of democracies powerless to resolve the grave problems of the day. Although such a situation would have seemed unbelievable twenty years ago, more than two-thirds of the people of Europe are now living under autocratic governments a thousand times more oppressive of public and private liberties than a Louis XIV or a Frederick II. How may we explain this downfall of the liberties believed by the last generation to have been definitively integrated in the patrimony of civilized humanity?

This is the primary burden of M. Lavergne's book, and it leads the author to inquire whether the current theory of universal suffrage meets the needs of the existing situation. Answering the question in the negative, the author proposes to substitute for the usual doctrine, which he considers to be merely metaphysical and *a priori*, a realistic theory believed to be both original and convincing. The right of the citizen to participate in the government of *la chose publique* is explained by the fact that, in order to live, he must constantly have recourse to a complete series of services furnished by the public authorities and for which he pays through taxation. Universal suffrage is given to each of us so that we may protect our moral and material interests—in short, our entire life. Nevertheless, a national collectivity cannot prosper, nor in the long run even maintain itself, if the general interest—quite different from the sum or the average of private interests—is incessantly sacrificed in favor of coalized individual interests. The French Parliament, as it is organized today, succeeds marvellously well in its task of defending private interests before the public authorities. But, in the reality of political life, who then has the responsibility and the authority to uphold the general interest as against private interests, whether the latter be corporative or individual? "Les Français sont actuellement représentés au Parlement non la France, avons-nous inscrit en exergue de ce livre. De là une direction où la France, souvent, ne se reconnaît pas."

Thus in our modern political structure there is a grave lacuna, a gaping hole through which the energy and the very life of the state seeps away without respite. So long as the active forces devoted to the service of the general interest have not been discovered and endowed with all the necessary authority, the crisis of the modern state will each day be aggravated. Now, these disinterested and competent forces, which the state must find if it is to be nourished and maintained, can emanate only from the body of the professional ranks, and in particular from all the social élites—both intellectual and economic élites. All knowledge ought to confer, in the political field as well as in practical life, a certain power

of command. Thus, in order to put an end to the debility of the democratic state, we must recognize in all *corps sociaux* the right, yea even the duty, to determine those elected to the two houses of parliament. In this way the social universal suffrage will be superimposed upon the individual universal suffrage which is already practiced; and this social suffrage is quite different from that professional suffrage which many have already discussed. Like all human inventions, universal suffrage will have to disappear, or, if it is to subsist, must be amended and enriched.

This, in substance, is the central theme of the work. These brief lines will enable one to appreciate its amplitude and its originality. No doubt many of the new ideas formulated by M. Lavergne will be strongly contested, but surely no one can remain indifferent to their timeliness. For the great political problem of modern times is here debated.

In the course of this interesting study, the author has striven to get to the bottom, through careful analysis, of doctrinal conceptions, some of which he opposes and others defends. He has also described the concrete mechanism which, among many others, might be used to put his theories into practice. At the same time, this effort to provide a thorough and profound study has not interfered with the lucidity of the argument, which is easy to follow. Anyone who is troubled by the paralysis, or at least the crippled condition, of the governmental machine of modern states will take a lively interest in reading these pages, in which vigor is allied with that real courage needed to combat traditional concepts which are still approved by the majority of the authorities.

JOHN B. WHITTON.

*Princeton University.*

*Droit constitutionnel international.* By B. MIRKINE-GUETZÉVITCH. (Paris: Librairie du Recueil Sirey. 1933. Pp. 251.)

The relationship between municipal and international law is usually discussed from a purely formal point of view. What is the source and what is the degree of authority to be attributed respectively to the one and the other? Do they form two systems of law, mutually independent and based on two distinct sources of authority? Or do they form a unity? In the latter case, where is the seat of supreme law-giving authority—in the state (which would lead to the supremacy of constitutional law) or in the international community (which would mean the supremacy of international law)?

The present volume, too, deals with the problem of relations between municipal—mainly constitutional—law and international law. But the point of view is rather that of an historian or a political scientist. The author is concerned with the contents and the effects of constitutional

and international rules, not with the formal authority attributed to them. A great wealth of material is brought together to show that the division between constitutional and international law by no means implies a corresponding division between rules of purely internal concern and those relating to matters of international interest. Indeed, national constitutions prescribe rules for such eminently "international" matters as war and peace and treaty-making, while, on the other hand, we find such essentially "constitutional" questions as the form of government in particular states, or the treatment by a state of its own nationals, governed by international law. The author seems to be justified in concluding that there is no sustained separation between the specific fields which constitutional and international rules seek to govern, and that these two sets of rules largely cover the same field. The difference between constitutional and international rules would then be merely one of procedural technique: formal enactment by unilateral action of one state only or by common action of several states.

Rules affecting international relations, whether they be enacted as constitutional or as international rules, tend to become more and more materially uniform. Professor Mirkine-Guetzévitch gives an interesting, if debatable scheme of the main trends of public law relating to international matters, and lays particular stress upon rules enacted as part of the constitutional law of particular states. He calls the latter "international constitutional law."

While refraining from a discussion of the authority of constitutional and international rules in a purely legal sense, the author has to consider the historical and social forces which have driven humanity, acting through states or otherwise, to develop rules concerning international organization, and to increase the material uniformity of these rules. He finds the chief of these driving forces in public opinion in its free and unfettered form, i.e., democracy. Democracy, essentially a movement aiming at the organization of society on the basis of equality of rights, tends, in the long run, to introduce the same principles in matters of international concern. The progress of international pacific organization, in the past as well as in the future, is said to be closely dependent upon the progress of democracy in human society. This "democratic" interpretation, in the reviewer's opinion the most challengeable generalization made in the volume, is mentioned here because of the author's particular insistence upon the point. It would seem, however, that the value of the main mass of material and conclusions presented by Mr. Mirkine-Guetzévitch is quite independent of the acceptance of his attitude on this question.

The author speaks repeatedly of the "historical and political unity of all public law." It seems to the reviewer that this term is somewhat too

ambitious and might lead to misunderstandings. Of course, one might admit this unity, inasmuch as there is a certain unity in all historical developments, closely bound together by the chain of continuity. It is also admitted that constitutional and international rules are closely interwoven in the field of public relations. But the author obviously strives to indicate a unity of trends and developments in the rules affecting all public relations in human society, such as undoubtedly exists now in the field of international relations. It suffices, however, to consider for a moment the extreme diversity of constitutional developments in our day, in order to see that this unity is scarcely more than a pious wish. But this unity of public law seems to be closely allied, in the author's mind, with the reign of democracy.

Two of the author's main generalizations have been seriously questioned in this review. Many statements of detail also raise serious doubts. But, on the whole, few books on the subjects of constitutional law and international law have been read by the reviewer with more stimulating and suggestive effect.

BENJAMIN AKZIN.

*University of Paris.*

*The Progress of International Government.* BY DAVID MITRANY. (New Haven: Yale University Press. 1933. Pp. 176.)

*The League Year-Book, 1933.* EDITED BY JUDITH JACKSON AND STEPHEN KING-HALL. (New York: The Macmillan Company. 1933. Pp. xiv, 468.)

Dr. Mitrany's small volume contains four lectures delivered at Yale University on the William Dodge Foundation. The central problem dealt with is that of bringing about such a modification of the orthodox conception of the sovereignty of the states of the world as will enable and dispose them to enter into fully coöperative and peaceful relations with one another. The author believes that considerable progress toward this end (which progress he describes) has been achieved. He believes, however, that full success can be secured only by the general acceptance of the doctrine that there is a universal legal order which, as expounded by such writers as Verdross and Kelsen, is to be regarded as the source of municipal as well as of international law. In this universal legal order, the individual states are to be viewed as equals as regards the protection of their existing rights and the opportunity to acquire new rights, but unequal as regards their shares in the formulation of international policies in the execution of which they necessarily have unequal responsibilities. The failure in the past to make this distinction, says Dr. Mitrany, has hindered the development of international coöperative effort, and, in order to overcome this defect, so far as it is exhibited in the League of Nations, he suggests the establishment of smaller regional leagues whose

several activities will be coördinated, and to an extent controlled, by the central or world League at Geneva.

Whether or not one agrees with Dr. Mitrany's views, his book will be found a stimulating one to read. Certainly the reviewer found it so, although he feels that, in common with so many other writers who criticize the orthodox or "positive" conception of sovereignty, Dr. Mitrany does not sufficiently appreciate that that conception, which is an indispensable one in the field of municipal law, does not prevent full coöperation between sovereign states, if sovereignty be regarded, as it should be, as connoting only legal competence as distinguished from moral rights, actual power, or political expediency.

The *League Year-Book*, the first edition of which appeared in 1932, is a reference work designed to give a detailed description of the manner in which the League of Nations is organized—its principal political organs, its commissions, committees, sub-committees, and other advisory and administrative agencies—together with the names of the persons serving upon these bodies and in the higher branches of the Secretariat. A similar, though briefer, description is given of the International Labor Office and the Permanent Court of International Justice. The activities of the League for the year are only summarized, but the texts of the Resolutions adopted by the Assembly are given in full. There is appended a carefully selected bibliography which lists not only the more important publications of the League, arranged according to subjects, but also the titles of leading works dealing with the League. The editors declare their intention to continue the yearly publication of the work if it meets with sufficient support, and it is to be hoped that this support will be forthcoming, for there can be no question that the volumes will be of great convenience for reference purposes to all persons who are interested in an organization which has become so complex, and whose activities are now so varied and numerous.

Sir Eric Drummond, former Secretary-General of the League, furnishes a short Foreword to the volume for 1932, and Lord Robert Cecil a similar commendatory note to the volume for 1933. The following statement by Viscount Cecil is worth quoting. He says: "When everything has been said about the non-success of the Economic Conference, the delays in disarmament, and the poltroonery or worse shown by some of the Great Powers in their dealing with the Far Eastern crisis, the broad fact remains that we have in vigorous life the first serious attempt at international organization for peace."

W. W. WILLOUGHBY.

*Washington, D. C.*

*Plebiscites Since the World War; With a Collection of Official Documents.*

BY SARAH WAMBAUGH. Two volumes. (Washington: Carnegie Endowment for International Peace. 1933. Pp. xxix, 603; xiv, 614.)

The intensity of European political change has varied in cycles of a little over fifty years during the past few centuries. The last three of these periods, characterized by a decade or two of frequent wars and territorial transfers, were inaugurated by the French Revolutionary Wars (1793), the Crimean War (1854), and the Balkan Wars (1912). Each of these periods has been characterized by the use of plebiscites, and in each successive period the device has been used more frequently, by a more orderly procedure, and more successfully, than in the preceding period. The World War treaties and subsequent decisions of the Supreme Council provided for twelve plebiscites, of which seven have been held, resulting in a determination of the sovereignty of the area. The Saar Basin plebiscite is to be held in 1935, and the remaining four plebiscites were abandoned. A formal plebiscite in the Tacna-Arica area between Peru and Chile was arranged in accordance with President Coolidge's arbitration, but was subsequently abandoned. Eight unilateral consultations of the population of a given territory with a view to determining its sovereignty have been held, but in no case under conditions assuring a fair expression of opinion and with little or no effect upon the disposition of the territory. The possibility of plebiscites in many other areas was discussed during the Peace Conference. Thus a formal procedure for implementing the principle of self-determination has made considerable progress during the past century and a half.

Miss Wambaugh, already the acknowledged authority on the subject through her earlier monograph on pre-war plebiscites, has served in the Secretariat of the League of Nations, and also as an expert adviser of the Peruvian government in regard to the Tacna-Arica plebiscite. She now presents the definitive history of these post-war plebiscites. No information available by documents or personal interview is omitted, and the most important documents are published in full in the second volume. The Peace Conference debate leading to the acceptance or rejection of proposed plebiscites is presented; also the history in detail of each plebiscite, with full attention to administrative arrangements, propaganda, and actual voting, as well as to formal rules, statistics, and consequences, with detailed comparisons and analyses.

The author is optimistic. She believes that a plebiscite will in many cases give a cheaper, juster, and more permanent territorial settlement than any other method. It is not, however, suitable for all circumstances, and it may be worse than useless if "lacking the measures necessary for the protection of both parties." What these measures are is stated briefly in eighteen rules. They include a formal agreement of the states inter-

ested, neutralization of the area during the plebiscite period, and delegation of full administrative authority during this period to an impartial commission supported by sufficient troops from impartial countries after evacuation of troops and partisan officials of both of the interested states. The attempted Tacna-Arica plebiscite ignored most of these rules. This seems amazing in view of the fact that President Coolidge and his advisers, who made the award authorizing and regulating this plebiscite, could easily have examined the experience accumulated in recent European plebiscites and fully recorded in Miss Wambaugh's earlier treatise.

One of the interesting features of this study is the clear evidence it contains that the language spoken in an area is a wholly inadequate guide to the opinion of the people. In most of the plebiscite areas surrounding Germany, that country received far more votes than her own figures of linguistic nationality would have led her to expect. The same is true of the Austrian vote in Klagenfurt. In some communes, especially the rural, more than fifty per cent of the people voted contrary to the linguistic expectation. The fairness of these European plebiscites is indicated by the fact that, although organized under Allied control, the majority of the votes favored one of the Central Powers in every case except the northern district of Schleswig. Only in the Upper Silesian plebiscite had the treaty failed to provide a definite boundary according to the result of the vote. This treaty provision contemplated a division of the plebiscite area in accord with the vote which was taken by communes, and while the line was not notably unfair to Germany, it has led to much dissatisfaction in that country. This was also the most expensive of these plebiscites because of several attempted Polish coups; its cost was thirty million dollars, while the others cost in all cases under half a million dollars.

It is coming to be recognized that satisfactory methods of peaceful territorial change are a necessary condition of permanent peace. All methods proposed have their faults, but doubtless the method of plebiscite will play an increasingly important part. While not yet recognized in international law as obligatory, Miss Wambaugh believes that two principles are emerging due to the institution of the League of Nations. "The first is that in the future any disposition of an area contrary to the will of the inhabitants will be improper unless it shall be done by the League itself in the interests of society as a whole. The second is that if the League should find that it cannot gratify the inhabitants' desire, it should internationalize the area" (Vol. I, p. 493). To the development of this device, Miss Wambaugh's masterful treatises have made a signal contribution.

QUINCY WRIGHT.

*University of Chicago.*

*La Nationalité dans la Science sociale et dans le Droit contemporain.* By B. AKZIN AND OTHERS. (Paris: Librairie du Recueil Sirey. 1933. Pp. xi, 349.)

*Regional Guarantees of Minority Rights; A Study of Minorities Procedure in Upper Silesia.* By JULIUS STONE. (New York: The Macmillan Company. 1933. Pp. xi, 313.)

The first of these two books is the third in a series of monographs on public law prepared by members of the *Institut de Droit Comparé de l'Université de Paris*. In the preface, the director, M. Levy-Ullmann and deputy-director, M. Gidel, set forth as their aim in publishing this series to educate jurists in the juridical texture of all countries and to give the more enlightened public elementary knowledge of social organization throughout the world. At the basis of modern social organization is found the idea of nationality. Therefore, the Institute has undertaken to present a comprehensive study of nationality according to the most recent methods of investigation and scientific classification.

Fourteen authors have contributed to the study, which is divided into two distinct parts. In the first part, B. Akzin, J. Ray, Mirkine-Guetzévitch, Mlle. Basdevant, and others treat nationality in its sociological, historical, and political aspects. The word "nationality" is used by some of the authors in the sense of status of persons in relation to the state, nationality being akin to citizenship but of broader connotation. By others it is used to denote a social group united by factors such as common language, customs, and traditions. One author deals with the "doctrine of nationalities," which has had the same force in political theory and practical politics as principles like that of "natural frontiers." Nothing original is added to existing literature in the analyses of factors producing the feeling of unity among a people regarded as a nationality, of the difference of the older idea of allegiance to a sovereign and the modern idea of nationality, of provisions of modern constitutions embodying the philosophic ideas of the eighteenth century, of the effect of emigration and transfers of territory on nationality, and of other questions. The same is true of the second part of the study, to which six authors have contributed a summary account of contemporary legislation on the legal aspects of the subject, such as origin and loss of nationality, naturalization, and conflicts between nationalities. However, the Institute has provided a useful survey of the subject, bringing together in one volume the fruits of contemporary scholarship.

*Regional Guarantees of Minority Rights* is an excellent study of one type of procedure at present in force under treaties for the protection of minorities, namely, that provided by the convention between Germany and Poland. The author describes the book as a companion to *International Guarantees of Minority Rights*, published by the Oxford University Press

in 1932, in which he dealt with the type of procedure which the League Council has developed in its rôle as guarantor of the several treaties concluded at the time of the Versailles Conference. The procedure in cases arising in Upper Silesia differs from the other particularly in providing regional machinery to which minorities have direct access. He finds certain advantages in the procedure provided by the convention to which the Council and signatories of the other treaties might profitably give their attention. The appendix, constituting a third of the volume, contains the text of the German-Polish convention of May 15, 1922, the rules of procedure of the Mixed Commission for Upper Silesia, pertinent resolutions and minutes of the League Council, and tables showing the cases submitted to the president of the Mixed Commission and those submitted to the Council. Mr. Stone maintains the high standard of scholarship achieved in his earlier study, which the present reviewer characterized in this REVIEW in April, 1933, as the best account of minorities procedure yet written.

HOWARD B. CALDERWOOD.

*University of Michigan.*

*Judicial Aspects of Foreign Relations.* By LOUIS L. JAFFE. (Cambridge: Harvard University Press. 1933. Pp. xi, 278.)

This book represents an attempt to "develop a theory of the function of recognition of foreign powers, considering the theories of the past and the present, the history out of which they grew, their relation to the basic concepts of international law and in particular to the theory of external sovereignty, and their truth and value in terms of current practice and current needs." As a background to his main task, the author discusses the doctrine and practice of the courts in regard to so-called "political questions," which he illustrates by reference to numerous cases. He then analyzes the theory and practice of recognition, and particularly the attitude and jurisprudence of the courts in respect to the recognition or non-recognition of foreign states and governments. He calls attention to some of the anomalous situations and contradictions which result from the present practice, to say nothing of the manifest injustice as regards private rights to which it sometimes leads.

As Mr. Jaffe points out, the power of non-recognition, instead of being based upon juridical principles, is today being employed as an instrument of national policy, and even as a political weapon. Some of the "dogmas" which underlie the current theory are quite untenable and illogical, such as the theory that in the eyes of the courts and executive authorities of non-recognizing states, an unrecognized government has no existence, that is, its existence is dependent upon its being recognized by other states. This is equally true, the author adds, of the assumption

that between the national and the international social order there is a clear line of cleavage, and that it is possible to insulate the order of the forum from other national orders and from the international order. He criticizes, it must be said in a strictly judicial spirit, the attitude which the courts have adopted in some cases. "Too often," he thinks, "they have failed to rise to the high levels of judicial law-making demanded by the situation," being hindered by the dead weight of rigid and untenable formulas; too often they have adopted a narrow and insular conception of their function, viewing it as definitely limited to the preservation of the national order, as if the national order could exist in a vacuum unrelated to other national orders and the international order, which is merely the sum of all the national orders.

The author aptly remarks that the long period during which the government of Soviet Russia was unrecognized gave rise to a "formidable host of profound and perplexing problems," like a crop of armed warriors springing from the dragon's teeth. He calls attention to some of these problems and discusses especially the attitude toward them which the courts have adopted.

JAMES W. GARNER.

*University of Illinois.*

#### BRIEFER NOTICES

##### AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

*Chapters in Public Finance* (Ray Long and Richard R. Smith, pp. 400-562), by Paul Studenski, reprinted from a two-volume work on *Economic Principles and Problems*, presents a well written general summary of this subject. The four chapters deal with the nature and mechanism of public economy (including budget methods), public expenditures, public revenues, and public credit. The growth of public expenditures, revenues, and debts is discussed and analyzed, with comparative data for the United States, Canada, the principal European countries, and Japan. The reasons for increased expenditures, the more important kinds of taxes and other revenues, and the economic effects of expenditures, taxes, and debts are considered briefly. Lists of suggested readings are given at the end of each chapter. *The Theory and Practice of Modern Taxation* (Commerce Clearing House, Inc., pp. 266), by William Raymond Green, furnishes a more extended discussion of present-day methods of taxation, with special reference to those of the national government in the United States. Most attention is given to income and profits taxes, including the problems of capital gains and losses, and the collection and evasion of the income tax. Other chapters deal with estate and inheritance taxes, sales taxes, and capital levies. Some account is given of the British and French

systems of taxation and the burden of taxation in the principal countries; and there is a brief consideration of state taxation and national and state expenditures in the United States. The author writes from his experience as chairman of the ways and means committee of the House of Representatives, and also shows his acquaintance with the views of leading economists. A program for changes in the state revenue laws to meet depression conditions, and a discussion of the reorganization of local government as a means of economy, are presented in the third report of the New York state commission for the revision of the tax laws, submitted February 15, 1933 (Legislative Document No. 56, pp. 216). Recommendations on local government include proposals for county home rule, optional forms of county government, and the creation of a state administrative district for the thinly populated Adirondack and border regions. An *Assessors' Manual* (pp. 69) has been issued by the Illinois tax commission, including the law relating to the assessment of property, and suggestions as to assessment procedure for valuing the various classes of personal property. A comparative study of *Legal Provisions Affecting Real Estate Tax Delinquency, Tax Sales, and Redemption* (pp. 41), by M. H. Hunter, has been published by the University of Illinois Bureau of Business Research. The American Municipal Association has issued a number of mimeographed reports on municipal revenues, dealing with *License Taxes, Revenues from Municipal Franchises, Installment Payment of Taxes, and State General Sales Tax Laws*; and bulletins entitled *Significant Changes in State Tax Systems and Tax Limits Prove Unwise* have been published by the General Welfare Tax League.—JOHN A. FAIRLIE.

In *The Economics of the Recovery Program* (McGraw-Hill Book Co., pp. 188), seven Harvard economists offer acute criticism of the Roosevelt Administration's policies. They indicate that, so long as the profit system is maintained, attempts to increase mass purchasing power by higher wages, shorter hours, artificial raising of farm prices, inflation, or inflationary public works, can result only in a general price increase which will leave real purchasing power where it was before. There are differences of opinion among the seven writers, but they share a general pessimism as to the possibilities of a managed capitalism, and apparently agree with the conclusions of the first and last essays, that what is needed is complete *laissez-faire* with an infusion of nobler business ethics. Leonard P. Ayres, in *The Economics of Recovery* (The Macmillan Co., pp. 185), holds the same faith in uncontrolled private enterprise, and blames the uncertainties of the Roosevelt policies for destroying revived confidence that had already started recovery in 1932. Like the Harvard economists, he considers the depression due primarily to non-economic causes: to the war, he thinks, which destroyed the normal equilibrium between pro-

duction, demand, and the flow of credit. He notices that unemployment in 1933 is primarily among those engaged in making "durable goods" in 1929; and as industrialists, not wage-earners, would purchase durable goods, he has no use for Roosevelt's attempts to raise labor's purchasing power at the expense of the industrialists' profits. Why industrialists should think it advantageous to invest in durable goods and expand production in the face of the depleted buying power of the mass of consumers, neither he nor the Harvard economists tell us. R. G. Hawtrey, in *Trade Depression and the Way Out* (Longmans, Green and Co., pp. 174), a new and enlarged edition of a book first published in 1931, analyzes the history of the depression in terms of monetary and credit policies. Mr. Hawtrey repeats his insistence that contraction of bank credit was the main cause of the depression, by leading to decreased production, and thus to unemployment and decreased demand. He sees the best hope of recovery in the inflationary policies of the Roosevelt administration. Withdrawal from the gold standard is an opportunity by which "each country separately can find the way out of the trade depression by so adjusting the purchasing power of its currency unit as to secure equilibrium between prices, wages, and debts." Mr. Hawtrey fears that the Administration's wage-raising policy may hinder recovery, inasmuch as wages, encroaching on profits, may deprive the industrialist of the incentive to expand production. How this equilibrium between prices and wages is to be found without encroaching on the industrialist's profits, Mr. Hawtrey does not adequately explain.—JOHN D. LEWIS.

Every worker in the field of federal law will welcome as a most valuable tool in locating provisions of law buried in acts pertaining to other subjects the recently published *Index to the Federal Statutes, 1874-1931. General and Permanent Law Contained in the Revised Statutes of 1874 and Volumes 18-46 of the Statutes at Large. Revision of the Scott and Beaman Index Analysis of the Federal Statutes* (Government Printing Office, pp. 1432), prepared by Walter H. McClenon and Wilfred C. Gilbert, of the Legislative Reference Service, Library of Congress. The volume not merely represents a bringing to date of the Scott and Beaman references, but embodies a complete recasting of the entries. The citations are to the Revised Statutes, to the Statutes at Large by volume, page, section, and date, and to the United States Code by title and section. As the index to the United States Code is entirely inadequate, the present volume serves as an index to that publication. It includes all laws of a permanent character at the time of passage, and provisions repealed, superseded, or no longer in force are indicated. In addition to the main index entries, it contains voluminous footnotes giving convenient lists of statutes, treaties, and proclamations on particular subjects. It has ample cross references,

but the alphabetical arrangement is contrary to that generally used, since the divisions between words are disregarded; thus Postal Service precedes Post Office Department, and Publicity appears between Public Health Service and Public Lands. Unless the user bears this in mind, he is likely to miss the entry desired. The appendix contains the following useful material: references to statutory definitions of words and phrases; lists of treaties and conventions, by countries; official or popular names of statutes, treaties, and proclamations; reference table to U. S. Code, Supplement V; and table of repeals and amendments.—L. F. SCHMECKEBIER.

*Government in the United States* (Thomas Y. Crowell Co., pp. xiii, 696), by Claudius O. Johnson, is intended for use as a textbook in college classes. The subject-matter and treatment appear to follow orthodox lines except in that feature of the arrangement which disregards the customary separate parts upon national and state government. The chapters on the presidency are followed immediately by a chapter on the state governor, the chapters on Congress by a chapter on state legislatures, and so on. In some cases, where a subject such as the civil service is treated in a single chapter, the section on the federal civil service is followed by a section dealing with the states. A few chapters carry the "functional" treatment further in that the division into two separate parts, national and state, is not quite so definite, but on the whole the "functional" feature consists in bringing into juxtaposition the chapters or sections, national and state, on a single subject. It appears to have had the result, however, of eliminating some of the repetition that occurs in texts in which such chapters are widely separated. There are two introductory historical chapters. The chapters on civil rights, citizenship and the suffrage, and political parties and campaigns precede those that describe the departments of government. Inter-governmental relations, government finance, commerce, agriculture, labor, social welfare, and in general the subjects usually dealt with in texts on United States government, have received well-balanced consideration. Federal legislation is brought down through the special session of 1933. The book is interestingly written, and teachers who prefer its order of treatment will find it adequate and serviceable.—W. REED WEST.

Ten years ago, the first edition of William B. Munro's readable and lively little volume, *Personality in Politics* (Macmillan Co., pp. 121), made its appearance. Since that time, research on personality has been making slow but nevertheless discernible progress. The new edition of Munro's book is hardly a record of this progress. Except for a few minor illustrations from events of the last ten years, the book is essentially the same as the earlier edition. No mention is made of the work of Rice,

Visher, Roback, Lasswell, and others in analyzing personality types. While the influence of Lippmann's discussion of public opinion is apparent in this book, no reference is made to the work of Dewey, Odegard, Allport and others in this field. Foreign writers are also ignored. However, the volume still stands as a brilliant essay and its usefulness has been increased by the addition of an index.—HAROLD F. GOSNELL.

In his monograph on *The Federal Reserve Board* (Johns Hopkins Press, pp. ix, 216), William O. Weyforth has analyzed the powers and functions of the Board in relation to those of the federal reserve banks with a view to determining their adequacy for the purposes of credit control. After discussing reserves and note issues, loans and rediscounts, and open market powers, the author weighs all of the factors involved and concludes that greater power over discount rates and open market operations should be lodged in the Board in order to permit it to function effectively. Changes designed to strengthen the personnel of the Board are also advocated. To the political scientist, this volume will be of interest chiefly as a study of control through an administrative board of the type which has attained significance among American political institutions.—FREDERICK A. BRADFORD.

#### STATE AND LOCAL GOVERNMENT

So that those who run may read somewhat of land planning, Professor Patrick Abercrombie has written *Town and Country Planning* (Henry Holt and Co., pp. 256). This book, unlike most popularizations, will probably be rather popular. Mr. Abercrombie writes deftly, the book is small enough to slip in one's jacket, and the print is large enough to read even on a London omnibus. The book treats concisely of the principles of historic and modern civic design. The illustrations actually illustrate. If Mr. Abercrombie peters out a little in his discussion of country planning and rural preservation, it is only the inevitable penalty of trying completely to "cover the subject." But for a succinct narrative and analysis of the patterns of cities and the plans of great planners this little volume is unique; even the tired college professor of the New Deal will find it absorbing and stimulating. Of another sort is Sir E. D. Simon's *The Anti-Slum Campaign* (Longmans, Green and Co., pp. 206). For the professional planner and the civic reformer, this is the Word. It traces the tedious, tortuous progress of slum clearance legislation and activity through the administration of the Addison, Chamberlain, Wheatley, and Greenwood Acts. It gets down to brass tacks. The question of rent restriction is discussed in its basic and elementary terms. The problem of administrative agencies is treated with brevity, but clearly. The general problem of the housing shortage—of the tasks of the administrative agencies—is

analyzed in Manchester and other principal British cities. Subsidies and the effects which they have on prices of building are discussed in terms which the RFC and TVA could and should understand. The problem of differential renting is treated with unusual clarity. It is, in short, a grand piece of work.—ROWLAND EGGER.

Those students of municipal government who have not been keeping up with the developments in urban sociology will find N. P. Gist and L. A. Halbert's *Urban Society* (Thomas Y. Crowell Company, pp. xvi; 724) very suggestive. Such sociological concepts as human ecology, symbiosis, succession, isolation, and social distance are used as frames of reference for the statistical and other materials which have been collected. The authors do not claim to have added to the theoretical analysis of modern urbanism, but they have brought together in convenient form some of the recent interpretations of city life. Political scientists who are concerned with such problems as governmental areas, political assimilation, citizenship training, and the service functions of modern municipalities will find the book useful and stimulating. The sections on the political organization of the city are set in a rich background. The sociological vocabulary was furnished by Gist, who studied at Kansas State Teachers College, the Geneva School of International Studies, the University of Kansas, the University of Chicago, and Northwestern University, while the materials on social work were supplied by Halbert, who has had many years of experience in social settlement work, pardon and parole work, and public welfare administration, and who is now supervisor of emergency relief in the District of Columbia. Gist is somewhat out of date in his handling of materials on vital statistics and insanity rates. The authors have relied heavily upon Park, Burgess, MacKenzie, Carpenter, and others.—HAROLD F. GOSNELL.

In his *Administration of Workmen's Compensation* (University of Wisconsin Studies in the Social Sciences and History, pp. 88), Ray Andrews Brown attributes the effective administration of the Wisconsin workmen's compensation law to the highly efficient and experienced personnel of the state industrial commission. The author approaches his problem with a lawyer's viewpoint, but tempered with an understanding of the theory of workmen's compensation and a recognition of the desirability, in administering the law, of avoiding overly legalistic procedure. One of the most interesting impressions gained from reading this volume is the widespread confidence in the judgment of the commission and its examiners, which is shared by the state supreme court. Among the suggestions made for improving the administration of the act is the recommendation that there be included on the commission's staff a trained

lawyer whose function would be to advise claimants who are not represented by counsel. This recommendation, the author points out, would not only relieve the commission of the duty of advocate, which he believes would be desirable in the interest of impartial adjudication of cases, but would also obviate delays now occurring because of faulty preparation of cases. The only concerted criticism of the commission, according to Professor Brown, comes from the state Federation of Labor and is based on the charge that physicians, who are selected by the insurance carriers, are frequently grossly biased against the workmen. The author concludes that in this respect "the ideal of perfect parity is not attained," but he avoids a critical appraisal of the solution demanded by the Federation of Labor i.e., exclusive state fund insurance.

In her beautiful volume *Amana That Was and Amana That Is* (State Historical Society of Iowa, pp. 502), Mrs. Bertha M. H. Shambaugh has produced a book possessing considerable interest for the student of politics and the art of community management as well as for the historian. Reprinting her *Amana: The Community of True Inspiration*, first published twenty-five years ago, as Part I, or *Amana That Was*, she follows it with an account of the reorganization achieved on June 1, 1932, which gives us *Amana That Is*. Part I occupies 332 pages, Part II, 103, aside from the articles of incorporation, by-laws, etc., which conclude the text. For most purposes, Part II is the important feature of the book. It aims to show how a communistic society of which inspirational religion was the bond, and the supposedly inspired religious leaders the actual rulers of the lives of its members, transformed itself into two corporations, a church and a business organization, of which each possesses important functions of local government. The Society had long been a civil town. Under the reorganization, the church has duties toward the poor and toward education, while the other corporation, under a democratically chosen board of directors, plans the business of the community, dominates internal affairs, and stands between the community and the outside world. Some features of the organization for economic planning and procedures might be suggestive in connection with proposed reorganizations of American towns and counties.—JOSEPH SCHAFER.

*County Government Costs in Pennsylvania* (Bulletin No. 297 of Pennsylvania State College, pp. 79), by F. P. Weaver and H. F. Aldenfer, deals primarily with expenditures in thirteen Pennsylvania counties for five years taken at intervals from 1913 to 1931. It is largely a statistical study containing 73 tables ranging in length from about one-fourth of a page to three pages each, and four very interesting charts and figures. Some noteworthy facts are brought out, particularly in connection with the absence of any discretion on the part of county authorities in spending

money, and the impossibility of fixing easily the responsibility for unwise expenditures of a discretionary nature. As high as 86.3 per cent of a county's expenditures, exclusive of debt service, were mandatory under the state's laws. Twenty-three different methods of procedure in making expenditures by county authorities are listed. The authors fail, however, to analyze sufficiently the benefits received from expenditures to justify, in the reviewer's mind, any conclusion that expenditures are too high. It is not unusual to find that a government's expenditures have increased since 1913—even at a greater rate than the cost of living. But a low per capita expenditure does not necessarily augur well for a political area. Comparisons of expenditures for simple services, e.g., those of a clerical nature, may justify the conclusion that certain counties are profligate spenders. But unless services are better analyzed, studies of this sort cannot be conclusive with reference to the wisdom of outlays for such services as education, highways, public health, and poor relief.—P. S. SIKES.

"The development of modern transportation and of the coal, iron, and steel industries and the tremendous economic and social changes which have produced the modern city have made private policing imperative," concludes J. P. Shalloo in his *Private Police* (American Academy of Political and Social Science, pp. ix, 224). Nevertheless, he is convinced that the state should control these "modern private armies" by making them directly responsible to local police departments or placing them under a state bureau of industrial police. Discussing railroad, coal, and iron police, private detectives, and patrolmen, with special reference to Pennsylvania as offering a typical situation, Dr. Shalloo has brought together the scattered legal and economic materials and presented the conflicting viewpoints of the employer and of organized labor. Regarding railroad police, "the fact that few complaints have been directed against them is eloquent of the efficiency with which they are controlled by the railroads." Adequate statistics and a well selected bibliography complete this first and promising monograph issued by the American Academy.—M. D. STEEVER.

The greater part of George O. Fairweather's pamphlet, *Wanted: Intelligent Local Self-Government* (University of Chicago Press, pp. vii, 52), is a diatribe against human nature in politics in a metropolitan area, although he thinks of it as a polemic against the party system there. His chief proposal is to substitute men who will work for the common good in place of the gentry that at present strive to satisfy some private or factional end. One of his recommendations for bringing this about looks to the selection of ward leaders by the elected precinct committeemen,

which happens to be the plan that Vare uses in Philadelphia.—J. T. SALTER.

In *The Constitution and Government of Texas* (D. C. Heath and Company, pp. 170, 86, iv), Professors Frank M. Stewart and Joseph L. Clark have succeeded in providing a usable college text on the government of Texas. Chapters are well documented and show the institutions of government as growing and developing and not static. Chapter I on the historical development of the Texas constitution, and Chapter II on the processes of amendment and revision, as well as the careful citation of cases throughout the book, contribute especially to such a concept of government.—BURR W. PHILLIPS.

The recently organized National Association of Housing Officials, with headquarters at 850 East 58th St., Chicago, has issued *State Laws for Public Housing; A Memorandum on the Drafting of Enabling Acts for Public Housing Agencies* (pp. 18). In view of the flood of legislation in recent months creating public boards to supervise the activity of private limited-dividend corporations eligible for loans of federal funds, the publication is timely.

#### FOREIGN AND COMPARATIVE GOVERNMENT

In *The National Workshops; A Study in the French Revolution of 1848* (Harvard University Press, pp. 191), Donald Cope McKay presents an interesting and authoritative study of a hitherto neglected subject. In the introduction there is a brief but significant analysis of the pathetic conditions of the proletariat on the eve of the Revolution of 1848. Widespread unemployment, governmental repression of workers' organizations and their consequent establishment under disguise, waste and corruption in political life, finally produced desperation, rioting, and crime. In the first chapter, the author relates the circumstances under which the Provisional Government was established and emphasizes its inherent weakness, which arose from the fact that it drew its support from both moderates and radicals. The former wanted only a political revolution; the latter were insistent on far-reaching social and economic changes looking toward socialism. The moderates, faced by the demands of the workers threatening further revolution, reluctantly decreed the establishment of the workshops, but placed them in charge of men who bitterly opposed them. Chaotic conditions prevailed from the beginning, partly because of the enormous numbers who sought employment. The remaining chapters deal with the dramatic story of the workshops: their organization on a semi-military basis by Emile Thomas; the enrollment of the workers in the National Guard; their loyalty during the demonstrations conducted by radical workers; the failure of the government to provide adequate

work; the election of an Assembly hostile to the workshops, which, under the leadership of Falloux, forced upon the government the policy of dissolving the establishments; the insurrection of the June days after the abduction of Thomas; and, finally, the abolition of the workshops after the suppression of the insurrection. The volume is well written; it contains keen analysis of political and economic forces, and is well documented with excellent source materials, including unpublished materials in the *Archives Nationales* and the *Archives de la Seine*.—ELMER D. GRAPER.

In *The Great Offensive* (Harrison Smith and Robert Haas, pp. xi, 368), Maurice Hindus, the well-known author of *Humanity Uprooted*, etc., contributes another book on the new Russia in his usual fascinating manner. The work is divided into three parts. In the first, entitled "For a New Economic Order," the machine, its production, and its effect on human nature in Russia is discussed. A new generation is arising which has no desire for individual gain, and the enthusiasm of youth has transformed the procrastinating and slothful Russia of the past. The villages, which were noted for their backwardness, are gradually, under the influence of the followers of the new régime, developing into more hopeful and enterprising communities. Collectivism, with its employment of agricultural machinery, is effectively eliminating primitive methods in agriculture. In Part II, which is entitled "For a New Human Personality," the author analyzes religion, morality, prostitution, the family, school, art, army, jails, and man—a formidable array of subjects to which, of course, no one could do justice within the scope of 137 pages. Mr. Hindus here repeats some of the observations made in his other books, adding some new developments which have taken place in recent years. In Part III, entitled "For New Adventures," observations on developments in Siberia are noted. In the concluding pages of the book, the author ventures the opinion that world revolution brought about by Bolshevik propaganda is not within the realm of possibility. *The Great Offensive* makes interesting reading. It will deservedly have a wide appeal.—B. W. MAXWELL.

*Political Handbook of the World; Parliaments, Parties, and Press as of January 1, 1934* (Harper and Brothers, pp. 202), edited by Walter H. Mallory, is the sixth annual issue of a political *vade mecum* which has passed the experimental stage and established itself as an indispensable tool for students of contemporary government and politics. As usual, the countries of the world are listed alphabetically, and for each are presented three main groups of data: (1) party alignments in the houses of parliament, (2) party programs and leaders, and (3) the principal newspapers, with their political affiliations and the names of their editors or

proprietors. The materials have been assembled with scrupulous care and presented concisely and attractively.

Professor James K. Pollock and Mr. H. J. Heneman have rendered a timely service to teachers of government by publishing in an inexpensive edition translations of the more important decrees of the German National Socialist government—*The Hitler Decrees* (George Wahr, Ann Arbor, pp. 82). These decrees, translated from the official *Reichsgesetzbuch*, present a precise documentary picture of the tremendous changes which the Nazi Revolution has effected in every phase of German government and life. The collection includes also a translation of the official program of the N.S.D.A.P., and of Hitler's more important speeches.

A volume issued recently in the "Economic and Social History of the World War," directed by Professor James T. Shotwell, is *La Pologne; sa vie économique et sociale pendant la guerre* (Les Presses Universitaires de France, pp. xii, 627), by Marcel Handelsman and five Polish collaborators. Students of government will be interested chiefly in a section of some 140 pages presenting a full and lucid account of the war-time efforts culminating in the creation of the present republic.

#### INTERNATIONAL LAW AND RELATIONS

*A Study of Chinese Boycotts* (Johns Hopkins Press, pp. xii, 306), by C. F. Remer, will be of interest not merely to the student of the commerce and politics of the Far East, but also to political scientists generally. While tracing minutely the development of boycotting in China from 1905 down through the most recent and extended movement of 1931, there is an introductory chapter on the difference between a "League boycott" and a "Chinese boycott," and the concluding chapter devotes some attention to boycotts in general. As to the 1931 boycott, the author concludes that it was so effective that one would not expect the Japanese lightly to provoke another like it. A boycott conducted by the most approved modern methods may be expected to reduce imports from the offending country about ten per cent in North China and from twenty-five to forty per cent in Central and South China. As to whether the boycott in the hands of the Chinese has been, or is likely to be, an effective weapon in securing political concessions from Japan, the author is more in doubt. In the past, some boycotts appear to have been measurably successful, but the notable fact is that Japanese policy in recent years has moved steadily on. The boycott as a weapon is apt to be like a blunderbuss. The author concludes, somewhat inconclusively: "Boycotting by a single nation is like the labor strike. The threat to strike is powerful; the strike itself is likely to be costly and inefficient. It seems plain that

coercion will continue to hold a place in international relations. If, as we hope, the accepted form of coercion is no longer to be war, the boycott in some form will, no doubt, find an important place. It is, undoubtedly, the world's oldest form of non-violent coercion. With the renunciation of war it may become a powerful weapon." The study was worth doing and has been done well.—TYLER DENNETT.

To attempt to read Walton Newbold's *Democracy, Debts, and Disarmament* (E. P. Dutton and Co., pp. xiv, 342) with its title or chapter headings in mind is only to make a difficult task more difficult. Just what the author intended by collecting between the covers of one book this series of observations, impressions, *pseudo-facts*, and occasional facts, this reviewer is at a loss to say. Somehow the impression is gained that the real intent was to show the interrelations of domestic politics, banks, industry, international finance, and international politics. Lacking a central theme, however, these aggregates of sentences fail to convey a picture of anything in particular. It is unfortunate indeed that one who, in his introduction, admits his wide travels and his training "as a research worker in economic as well as political history" should have permitted his manuscript to go to press so prematurely. Assuming that the content of a book should relate in some way to its title, careful revision of the manuscript might have resulted in the elimination of the large quantity of extraneous material which now serves only to becloud the issues and to confuse the reader. Such a revision might also have given opportunity to distinguish between facts, capable of substantiation by specific references, and mere opinions of the author. Most important of all, however, it would have served to remove miststatements, such as that Japan imposed the "notorious Fourteen Points" upon China (p. 68), or that "on the 9th of February the United States secured the entry of China into the war on the side of the Allies" (p. 72).—WALTER H. C. LAVES.

In his doctoral dissertation, *Great Britain and the German Trade Rivalry 1875-1914* (University of Pennsylvania Press, pp. xii, 363), Dr. Ross J. S. Hoffman, of New York University, has attempted to depict the inroads of German commerce and industry on British markets in the pre-war period, the British national reaction to this unwelcome competition, and the influence of the resulting economic rivalry on British policy toward Germany. The book contains a large amount of factual information about Anglo-German commercial relations and the trends of British opinion toward Germany. The conclusion is not new: "The British government may stand acquitted of making war for the ends of trade, but that the anti-German orientation of the British mind and British world policy sprang chiefly from the great economic competition seems incontrovertibly proved." The technique of analysis employed in arriving at

this conclusion leaves much to be desired. It rests upon no clearly formulated conception of the processes by which foreign policy is determined. It involves no examination of the specific economic consequences of German competition to various groups in British society, nor of the tensions and resentments engendered thereby, nor of the rôle of these groups in shaping British opinion. Dr. Ross, in short, is insufficiently aware of the background patterns of social and political interrelationships, and he fails to verbalize his basic assumptions. Within the limitations of these faults, which the author shares with most historians and many social scientists, the work is commendable for being well-written, informative, adequately documented, and competently organized.—FREDERICK L. SCHUMAN.

As editor and principal author of *Survey of International Affairs, 1932* (Oxford University Press, pp. vi, 643), Professor Arnold J. Toynbee found the events of the year covered sufficiently different in nature from those of the cataclysmic year 1931 to permit a return to the usual method of the series—that, namely, of concentrating upon the external relations of different countries with one another, instead of going deeply into the internal affairs of the countries that were playing the leading rôles. As a result, the present volume is taken up with substantial surveys of tariffs and exchange control and of debts and defaults, by H. V. Hodson; German reparations and war debts, by R. J. Stopford; non-German reparations, by Jules Menken; and with three lengthy studies by Professor Toynbee himself dealing with disarmament and security, Northeastern Europe, and the Far East. All of the surveys are well done, but perhaps the one which contributes most is that in which Professor Toynbee reviews and interprets the relations between Germany and Poland in 1926–32 and between Poland and Danzig in the same period. As usual, a full chronology of events, enriched with documentary citations, is appended. A second and related annual publication of the Royal Institute of International Affairs, *Documents on International Affairs, 1932* (Oxford University Press, pp. xiii, 437), edited by John W. Wheeler-Bennett, will similarly be of great value to students of international relations. About half of the volume is devoted to documents of 1932 on reparations, war debts (especially to the United States), and disarmament. The other half has wisely been planned to bring together for the first time all of the significant documents relating to the Sino-Japanese dispute from September, 1931, to March, 1933, “a complete chapter in itself,” observes Lord Eustace Percy in the Introduction which he supplies as chairman of the Institute’s publications committee, “though a chapter in a story which may yet, one hopes, have a happier ending than now seems probable” (p. v). The volume closes with a complete and very convenient “Chronology of Treaties,” with the usual documentary citations.—F. A. O.

One of the numerous recent monographs on various phases of the League of Nations and international government is a comprehensive study, *The Unanimity Rule and the League of Nations* (Johns Hopkins Press, pp. xi, 224), by Cromwell A. Riches. In two chapters the author outlines the various League plans and the negotiations leading to the Covenant provisions on unanimity. Three chapters (120 pages) then analyze in detail the applications, interpretations, and modifications of the unanimity rule since 1920. In these three chapters the following topics are covered: (1) abstentions from voting—counted as tacit approval, although almost always actually representing disapproval; (2) the very broad interpretation of "matters of procedure"; (3) the making of "recommendations" by majority vote in the Assembly when unanimity for a "decision" is not present; (4) the proposal of amendments by less than unanimity; (5) committee procedure; and (6) the right of parties to a dispute to vote—there is still some unsettlement of the extent of the deprivation. The author applauds the modifications of the unanimity rule and confidently predicts still further ones. Another chapter deals with the non-permanent Council membership amendment and treaty provisions departing from the rule of unanimity. Two final chapters give a well-balanced estimate of the effect of the unanimity rule on Assembly and Council, respectively. The author relied chiefly on League documents for his material, though he lists a number of secondary sources in a brief bibliography. The book is a very competent piece of scholarship.—  
LUTHER H. EVANS.

Dr. Yi-Ting Chang offers, in his *The Interpretation of Treaties by Judicial Tribunals* (Columbia University Press, pp. 196), a refreshing treatment of a confused and confusing subject. The subject has become involved largely because of the continuing reliance by publicists on classical "canons of construction," the tendency of jurists and judges to apply rules of interpretation characteristic of their own judicial systems, and the misleading character of dicta. By analyzing some 150 decisions of international tribunals and national courts, the author is enabled accurately to draw from judicial practices a number of interesting conclusions on the interpretation of treaties. He deals chiefly with substantive rules concerning: Respect for "Clear Meaning" (Chapter II); Constructions When the Text Appears Doubtful (Chapter III); Constructions Interfering with the Manifest Purposes (Chapter IV); Admissibility of Preparatory Work (Chapter V); Versions in Differing Languages (Chapter VI); and The "Rule of Liberal Construction" (Chapter VII). His basic premise is that "the whole problem [of treaty interpretation] becomes a question of evidence, the presentation of which calls for and also permits the simplest methods of proof," and it is amply supported by

his analysis of actual judicial decisions. His resulting treatment appears at first over-simplified, but mainly because of the careful analysis in which superficial and confusing dicta are put in proper significance. The book should be welcomed for its clear and objective statement.—A. E. HIND-MARSH.

*British Preeminence in Brazil: Its Rise and Decline; A Study in European Expansion* (University of North Carolina Press, pp. xi, 371), by Alan K. Manchester, is a careful study of the origin, development, and partial decline of British interest in Portuguese America. Beginning with a consideration of the Anglo-Portuguese treaties of the seventeenth century, Dr. Manchester describes the foundation of English interest in Portugal. His third chapter depicts the flight of the Portuguese dynasty from Lisbon to Rio de Janeiro in 1807-08 and the acquisition by England of commercial privileges in Portuguese America. Another chapter is devoted to the successful attempt of the English to secure those significant privileges, immunities, and guarantees which were included in the Anglo-Portuguese treaties of 1810. The complicated series of events which culminated in the acknowledgment of Brazilian independence by both Portugal and England is described in detail. Large space is accorded to the decline of British influence in Brazilian politics from 1827 to 1860, and incidental attention is paid to the development of commercial interest in Brazil by Germany and the United States. The text is followed by a carefully selected bibliography of books and articles, the whole forming a handsome and instructive volume which will be welcomed by students of English, Portuguese, and Brazilian history, as well as by students of international relations.—WILLIAM S. ROBERTSON.

*Krig eller Fred [War or Peace]* (Stockholm: Albert Bonniers Förlag, pp. 245), by Orvar Wallengren, is a brief but interesting study of the movement for the organization of peace. In five chapters, the author discusses the causes and results of war, inquires into the problem of whether war should and can be abolished, surveys the peace movement, makes certain proposals for a peace organization, and finally speculates on the effect of such new conditions as are suggested by present-day trade and economics, bolshevism, fascism, the growth of labor parties, and the like. The author thinks that if there is any solution at all for the problem of war or peace, it must lie in a league of nations somewhat more limited than the present League. He suggests a league of the white peoples of Europe and America, to which league other peoples, such as the yellow races, might later be admitted when this could be done without risk to unity and harmony. Although limited in membership and scope, this league would be militarily powerful and possess a common army and navy, but without in any other respect interfering with the sovereignty

of its members. The idea is interesting, but hardly practicable, and the other parts of the book are considerably more enlightening.—CLARENCE A. BERDAHL.

An English supplement to the *Zeitschrift für Politik*, published early in 1933, brought together twenty admirable papers by important Germans on various aspects of the disarmament problem (reviewed in this REVIEW in August, 1933, pp. 671-672). A second English supplement to the same journal has now been published, under the title *Development of Disarmament Deliberations from the Beginning of the Conference to the End of 1932* (Berlin: Carl Heymanns Verlag, pp. 60), and comprising two papers by Wilhelm Schaer and Karl Schwendemann, respectively. These papers are, in a sense, a continuation of the studies in the earlier series, and together constitute an excellent survey of the progress of disarmament in the Conference, with particular attention to the problem of German equality. Five tables are added, which show at a glance the attitudes of the different countries toward the most important questions before the Disarmament Conference and the results achieved up to the time of writing. Altogether, these two papers constitute a very useful addition to the studies on disarmament.—CLARENCE A. BERDAHL.

*A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries* (Carnegie Endowment for International Peace, pp. xxx, 1505), edited in two volumes by A. H. Feller and Manley O. Hudson, brings together in convenient form texts of the principal diplomatic and consular laws and regulations of the more important countries. From Albania to Yugoslavia, the principal texts are given relating to (1) the organization of the respective diplomatic and consular services, and (2) the status of foreign diplomatic officers and consuls. An appendix of fifty-three pages lists, by countries, treaties containing consular clauses of more or less general interest; and the kind of index that legal researchers like crowns the work. For students in this field these volumes will be indispensable work-books, and the editors are to be congratulated for thus making more generally available these materials gathered by the Harvard Research in International Law.—LLEWELLYN PFANKUCHEN.

As a step in the direction of more coöperation among research and other organizations dealing with foreign affairs, and with a view to helping people "understand the forces underlying contemporary international problems," the Foreign Policy Association and the World Peace Foundation have undertaken the publication of a joint series of brochures under the title of "World Affairs Pamphlets." It is expected that issues will appear at the rate of perhaps ten a year. No. 1., entitled *The World Adrift* (pp. 38), consists of a general survey of the world situation by

Raymond Leslie Buell, closing on a note of doubt as to whether the Roosevelt Administration realized (last autumn, at all events) that the success of its efforts "depended in part on the development of a new foreign policy." No. 2., *Soviet Russia: 1917-1933* (pp. 40), by Vera Micheles Dean, presents an excellent bird's-eye view of Soviet government, industry, and agricultural policy, and of "The Soviet Union and the Capitalist World."

Described by its compilers as "a modest attempt to meet the demands of those who wish to obtain correct information regarding the general conditions and activities of Manchoukuo," *Manchoukuo; A Handbook of Information* (Manchoukuo Department of Foreign Affairs, pp. 161) is a compendium of statistical and other information valuable chiefly for the indications of future political and economic policy which it somewhat indirectly conveys.

#### POLITICAL THEORY AND MISCELLANEOUS

In *Sidney and Beatrice Webb* (Houghton Mifflin Co., pp. vi, 310), Mrs. Mary Agnes Hamilton, former Labor member of Parliament, novelist, lecturer, and writer of a biography of MacDonald, presents a useful popular account of the Webbs' career up to the present time, and concludes with an appeal for books by them on Russia and on their own life from the point at which Beatrice Webb's *My Apprenticeship* ended. The student of politics familiar with contemporary Britain will find no important new information in the book, while the interpretations presented are those already held by most informed publicists and students. The general reader will obtain a clear and helpful view of the important influences and movements contributing in the latter part of the nineteenth century to a reorientation in British politics. The importance of the Fabian group is stressed, and the value of Mrs. Webb's family and social connections in the governing class of the time indicated. Tribute is paid to the pioneer research of the Webbs into the coöperative and trade union movements, and to their contribution through the Poor Law Commission to new conceptions of social policy, although their campaign ended in defeat. The important work done by Sidney Webb on the London County Council and the contribution of both to the birth and development of the London School of Economics is recorded. The latter third of the book describes Mr. Webb's work in the Labor party as a member of the inner councils, member of Parliament, and of the cabinet. In his second cabinet post, as Secretary of State for the Colonies, he was most unhappy, and his deep-rooted conservatism in matters of imperial and international policy helped to make an already difficult situation in Palestine worse. To many readers the interpretation of the character of these two able

persons will be much the most interesting aspect of the book. Mrs Hamilton has done this work of interpretation with acute insight, wisdom, and patent fairness.—JOHN M. GAUS.

The first comprehensive book for social workers on legal questions relating to the family has been prepared by Dr. Sophonisba Breckenridge, lawyer, pioneer social worker, and stimulating teacher. *The Family and the State* (University of Chicago Press, pp. 565) is a source book, the materials for which have been selected from judicial decisions, parliamentary debates, statutes, reports of commissioners, etc. The important legal relationships of husband and wife, including marriage and divorce, termination of marriage ties, reciprocal rights of husband and wife in the person of each other, property rights of husband and wife, occupy approximately half of the book. Parent-child relationships, the problems associated with guardianship, apprenticeship, adoption, and illegitimacy are presented in the other half. There is a minimum of comment and editing, which is missed by the reader, although adequately provided by Miss Breckenridge in the class room. Materials on the legal aspects of sterilization and the provisions of the state for the family needing public assistance are lacking. The book will be of great value not only to teachers of social work and to those interested in social legislation and social research, but to lawyers having more than a purely legalistic viewpoint toward some of the problems of society and also to public administrators having to do with various aspects of the relationships between the family and the state.—HELEN I. CLARKE.

The main theme of Charles Burdet Judah's *The North American Fisheries and British Policy to 1713* (University of Illinois Studies in the Social Sciences, XVIII, Nos. 3-4) is the conflict of the fishermen of western England and London merchants for the profits of the Newfoundland fishery. The former desired to carry on the fishery by means of an annual fleet sailing from England; the latter through colonists established at the island. During two centuries, English policy shifted in response to the pressure of these two groups, and the influence of the west country men prevented the establishment of a permanent government for the colony. Eventually, the threat of French occupation of Newfoundland compelled the adoption of the London program. Mr. Judah considers English policy as one of exploitation of the colonies for the benefit of English capitalists—a policy that developed in the face of "immediate problems or at the demand of some group interested in immediate gain." The methods of the Newfoundland fishery are excellently analyzed, but the New England fishery is not treated fully, nor is the Anglo-French conflict. The writer's approach is realistic; his discussion is fresh and lively; and his summaries are admirable. He has taken pains to understand his materials, to per-

ceive their relationships, and to form them into an effective pattern.—CURTIS NETTELS.

In his *Emile Durkheim on the Division of Labor in Society* (Macmillan Co., pp. xliv, 439), George Simpson has done American students of social thought a real service. It is both a commentary upon our provincialism and a mark of spreading interest in the moral nature of society that a work first published in 1893, and long influential abroad, should only now be made available in English translation. Even from students of government in a pre-NRA sense, Durkheim's essay on occupational groups, first written as a preface to the 1902 French edition, should elicit attention; while his effortful analysis of the moral significance of types of law in society merits the attention of architects of the New Deal. In the present volume we are given a competent translation of *De la Division du Travail social*, the prefaces to the first two editions, the portions of the original Introduction omitted from subsequent editions, and a twenty-page estimate by the translator.—ALLAN F. SAUNDERS.

*Forced Labour in the United States* (International Publishers, pp. 186), by Walter Wilson, is a defense of the Soviet Union against the charge of "forced labor" which was made in conjunction with a campaign to debar Soviet-made goods under a provision of the Smoot-Hawley tariff act of 1930. As a defense, it proceeds on the old principle that the best defensive is a vigorous offensive. It accordingly describes the conditions of convicts in the more backward states of the American Union and exposes the use of forced and peon labor in the colonial countries tributary to American capitalism. Only a small part of the book is given to a description of Russian labor conditions, which includes a section on the Kulaks uprooted in conjunction with the recent campaign to collectivize Russian agriculture. The quality of the treatment puts the book decidedly above the level of a mere work of propaganda.—SELIG PERLMAN.

In an effort to keep a readable and generally excellent textbook up to date, F. Lee Benns has brought out an edition of his *Europe Since 1914* (F. S. Crofts and Co., pp. xiv, 862) which records events as recent as the German plebiscite of last November and the recognition of the Soviet Union by the United States. A classified bibliography running to upwards of seventy pages forms a convenient reference list. *Europe Since Napoleon* (Ginn and Co., pp. ix, 890), by Franklin C. Palm and Frederick E. Graham, is another good text, subordinating factual detail and dominated by emphasis upon the rôle played by the middle classes in the development of contemporary Western civilization.

For twenty years, Gilbert Slater's *The Making of Modern England* has been a standard textbook on English social and economic history since

the Industrial Revolution. A new edition under the slightly altered title of *The Growth of Modern England* (Houghton Mifflin Co., pp. xi, 642) does not attempt to trace developments beyond 1914, but nevertheless makes full use of the new light thrown upon the preceding century and a half by what has happened since that date. There are brief chapters on such topics as local government and parliamentary reform, and the entire volume helps to an understanding of political conditions and developments.

During the four years (1929-32) in which the journal was issued, *Social Science Abstracts* furnished scholars a unique record of current periodical publication in the fields of political science, economics, sociology, statistics, history, anthropology, and human geography. A consolidated *Index to Volumes I-IV* (pp. 725) adds value to the journal's files; and particular interest attaches to an appendix in which will be found by all odds the most comprehensive list of periodicals and serials in the social sciences ever compiled.

In his *The Civilization of the Old Northwest* (Macmillan Co., pp. ix, 543), Professor Beverley W. Bond, Jr., presents an excellent general picture of the political, social, and economic development of his chosen section in the formative period 1788-1812, but without going much more deeply into the origins and growth of political institutions than previous historians have done. There is a good deal on the early governorships and on territorial and state legislatures, but less than might be expected on county, township, and other local government.

Professor Walter C. Langsam has taken advantage of the publication of a second edition of his excellent volume on recent history, *The World Since 1914* (Macmillan Co., pp. xv, 742), to add a brief chapter entitled "Crossroads" and also a "Summary of Most Recent Developments." The REVIEW regrets that in its notice of the first edition, in the issue of last August, the book was erroneously credited to another publisher.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

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### AMERICAN GOVERNMENT AND PUBLIC LAW

#### *Books*

- Anderson, B. M. Jr.* On the practical impossibility of a commodity dollar (Pamphlet). N.Y.: Chase Nat. Bank.
- Anti-depression legislation. Pp. 188. N.Y.: Am. Inst. of Banking.
- Astor, Viscount*, and *Murray, Keith A. H.* The planning of agriculture. N.Y.: Oxford Univ. Press.
- Atkins, Willard E.* Gold and your money. N.Y.: McBride.
- Barnes, Harry Elmer.* Money changers versus the new deal. Pp. 150. N.Y.: Long & Smith.
- Berenberg, D. P.* America at the crossroads. N.Y.: Road School Press.
- Bernstein, Louis.* The N.R.A. and the new deal. N.Y.: Globe Book Co.
- Bidwell, Percy Wells.* Tariff policy of the United States; a study of recent experience. Pp. 132. N.Y.: Council on For. Relations.
- Bill, Annie C.* Government in the new era (Pamphlet). N.Y.: A. A. Beauchamp.
- Black, W. H.* Our unknown constitution. Pp. 215. N.Y.: Real Book Co.
- Breckenridge, Sophonisba P.*, ed. The family and the state; select documents. Pp. 579. Chicago: Univ. of Chicago Press.
- Brown, Douglass V.*, and *Others.* The economics of the recovery program. Pp. 200. N.Y.: McGraw-Hill.
- Brunner, Edmund de S.* The farm act of 1933. Pp. 29. N.Y.: Columbia Univ. Press.
- Chapman, John W.* Railroad mergers. Pp. 169. N.Y.: Simmons-Boardman.
- Cheadle, J. B.*, and *Others.* No more unemployed. Pp. 124. Norman (Okla.): Univ. of Okla. Press.
- Clay, Cassius M.* The mainstay of American individualism. Pp. 282. N.Y.: Macmillan.
- Edmunds, Sterling.* The federal octopus in 1933. 3d ed. Pp. 158. Wash.: Grosvenor Dawe.
- Economic significance of the N.R.A. Pp. 11. N.Y.: Nat. Stockholders Soc. of Am.
- Fetter, Frank Whitson.* The new deal and tariff policy. Pp. 29. Chicago: Univ. of Chicago Press.
- Fickeisen, Richardson*, and *Kennedy.* Securities act of 1933 and corporation of foreign bondholders act, 1933. Pp. 95. Los Angeles: Parker, Stone and Baird Co.
- Hansen, Peter*, and *Polland, W. L.* Condemnation appraisal procedure. Pp. 467. Glendale (Calif.): Peter Hanson.
- Hauman, Robert V.*, and *Others.* American citizenship practice. Rev. ed. Pp. 638. Lincoln (Neb.): Univ. Pub. Co.
- Hathaway, Esse V.* The book of American presidents. 2d ed. Pp. 399. N.Y.: McGraw-Hill.
- Hoar, Roger S.* Wisconsin unemployment insurance. S. Milwaukee (Wis.): Stuart Press.

- Hubbard, Joseph B.* The banks, the budget, and business. Pp. 161. N.Y.: Macmillan.
- Individual and collective bargaining under the N.I.R.A. Pp. 46. N.Y.: Nat. Indus. Conf. Bd.
- Ireland, Tom.* The Great Lakes-St. Lawrence deep water-way to the sea. Pp. 223. N.Y.: Putnam.
- Johnsen, Julia Emily*, comp. Increasing the president's power. Pp. 135. N.Y.: H. W. Wilson.
- Larson, Emil L.* School finance and related problems in Arizona. Pp. 85. Tucson (Ariz.): Univ. of Ariz.
- Leffler, George L.* Public expenditures, tax burdens, and bonded debts in Wisconsin and neighboring states. Madison (Wis.): Univ. of Wis.
- Lindenthal, Gustav.* A sound scientific money system, as cure for unemployment. Boston: Stratford.
- Low, S. P.*, and *Coules, S. V. F.* Unemployment insurance. Pp. 123. N.Y.: Pitman.
- Lyon, Leverett S.* The economics of free deals. Washington: Brookings.
- McConaughy, John.* Who rules America? N.Y.: Longmans.
- McDonald, William.* The menace of recovery. N.Y.: Macmillan.
- Mahr, Alexander.* Monetary stability and how to achieve it. Pp. 27. Chicago: Univ. of Chicago Press.
- Marshall, Leon C.* Unemployment relief and public works. Pp. 29. N.Y.: Columbia Univ. Press.
- Mulhern, James.* A history of secondary education in Pennsylvania. Lancaster (Pa.): Science Press.
- Munro, William B.* Personality in politics. New ed. Pp. 121. N.Y.: Macmillan.
- National Association of Railroad and Utilities Commissioners.* Proceedings. N. Y.: State Law Reporting Co.
- National Conference of Social Work.* Proceedings, 1933. Pp. 763. Chicago: Univ. of Chicago Press.
- Padin, José.* American citizenship and other addresses. San Juan (Puerto Rico): Puerto Rico School Rev.
- Pasvolsky, Leo.* Current monetary issues. Washington: Brookings.
- Rogers, Lindsay.* Crisis government. N.Y.: Norton.
- Root, Grace C.* Women and repeal. Pp. 231. N.Y.: Harper.
- Rugg, Harold Ordway*, and *Krueger, Marvin.* Study guide to national recovery. Pp. 48. N.Y.: John Day.
- Schlesinger, Arthur Meier.* Political and social growth of the United States, 1852-1933. Rev. ed. Pp. 575. N.Y.: Macmillan.
- Schumpeter, J. A.*, and *Others.* The economics of the recovery program. N.Y.: McGraw-Hill.
- Sprague, Oliver Mitchell W.* Recovery and common sense. Pp. 96. Boston: Houghton, Mifflin.
- Stein, Emanuel*, and *Others.* Labor and the new deal. Pp. 95. N.Y.: Crofts.
- Stewart, Dora Ann.* Government and development of Oklahoma Territory. Pp. 446. Oklahoma City: Harlow Pub. Co.
- Stewart, Frank Mann*, and *Clark, Joseph L.* The constitution and government of Texas. Rev. ed. Pp. 260. Boston: Heath.
- Storm, W. B.*, and *Storm, H. C.* Taxes and taxation. Pp. 108. Bloomington (Ill.): McKnight & McKnight.
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# The American Political Science Review

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## RUSSIAN-AMERICAN RELATIONS, 1917-1933: AN INTERPRETATION

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*University of California at Los Angeles*

The assumption by the government of the United States of diplomatic relations with the government of the Union of Soviet Socialist Republics on November 16, 1933, closed a long and unique chapter in the annals of American diplomacy. Now that this phase has become historic and a new era in Soviet-American relations has been officially inaugurated, it is possible to review and appraise the highly contentious and illucid interval between 1917 and 1933 with some degree of accuracy and finality. The purpose of this discussion is, therefore, to examine the whole period candidly, objectively, dispassionately, by means of an analysis of the attitude of the United States government, as officially expressed in diplomatic documents or the utterances of responsible statesmen in the period since tsardom fell in Russia. It is desirable, however, to relate those statements, and the positions taken, to the historic attitudes of both Russia and the United States in the course of the last one hundred years; for it is only as the policy of the United States is seen in its full historic setting, in relation to the principles of international law long espoused and followed in American diplomatic practice, that the more recent phases of that policy can adequately be judged.

That setting begins with the American Revolution. There has long been current a myth, reiterated even during the recent negotiations, concerning the "traditional friendship of Russia for the United States." Whatever justification it may have in our later annals, it has none in the early hours of our independence. Instead, there is the inescapable fact of a futile two-year mission of Francis

Dana to the court of St. Petersburg, in the course of which the young American diplomat was unable to obtain a hearing for his country or present the American cause to the Empress Catherine II. As far as any assistance from Russia toward our liberation from Britain, her age-long rival, was concerned, it was nil, even though it might have been to Russia's immediate and long-range advantage to undermine the strength of the British Empire by assistance to the rebellious colonies. Tsarism, however, had no traffic with revolution. Russia was in fact among the last of the powers to recognize the United States; it was well over a quarter of a century after we were an independent nation, and recognized as such, before the government of the tsars welcomed a permanent diplomatic mission at St. Petersburg, and no treaty relations were established with the Russian Empire until 1824, almost a half century after the proclamation of our independence. An inherent opposition to our principles of government, an unwillingness to covenant with a state born of revolution, characterized the early attitude of tsarist Russia toward the United States.

A further revelation of contrasting positions came in 1823. The Monroe Doctrine was directed partly against Russia, as much because of her territorial and maritime claims on the Pacific as because of her projected intervention in the New World to seek the restoration of the revolted Spanish colonies. In this important episode Russia frontally opposed the United States on two points. In the first place, she declared her unequivocal objection to the partition of the Spanish domain. She regards it as opposed to the interests of the European household, and of the family of states in general, that foreign powers should exploit Spain's weakened condition following the Napoleonic wars by recognizing as independent entities her revolting or seceding colonies. She considered herself specially privileged to maintain, out of disinterestedness, the principle of the territorial integrity of the decadent Spanish Empire, seeing that both the United States and Great Britain stood to profit by its partition. In the second place, Russia objected to the recognition of the Spanish American republics because it meant, in principle, compounding with revolution, the legitimization of régimes coming into being without the consent of lawful, constituted authority—in this instance His Most Catholic Majesty, the king of Spain. At a critical moment in her history, Spain had made a covenant, through a government established by bayonets, with the

common foe of the Allies—Napoleon. Revolution had followed throughout Spanish America, not without British approval. In the face of such events, Russia, anticipating Mr. Stimson by nearly one hundred and ten years, refused to assent to the partition of empire or the recognition of the Spanish American republics.

It was not until a third of a century later, during the Civil War, when Russia and America were alike confronted by secessionist and revolutionary movements, that the two countries first made common cause. Our historians record an imposing Russian naval demonstration in American waters as a gesture betokening the solidarity of the two countries, at a time when Britain and France threatened to recognize the Confederacy.<sup>1</sup> What is not so frequently realized is the fact that by this act of supporting the constitutional order in America, Russia at least diplomatically prevented a protest, if she did not actively estop the government of the United States from interceding on behalf of the Poles in their ill-starred revolutionary uprising. Sweet are the uses of adversity. For the first time in their respective histories, Russia and America found themselves allied in common against insurrectionary movements in their individual domains. Lincoln and Alexander II might, respectively, liberate slave and serf, but they would not tolerate revolutionary secession.

The momentary community of interest in the critical sixties gave way, however, to feelings of increasing suspicion and mistrust, as the oppressed peoples of Russia in large numbers left their homeland to take up their residence among us. The United States thus became the foyer of powerful anti-dynastic, republican, and separatist propaganda persistently conducted against the Romanov régime by representatives of the non-Russian nationalities on the one hand, and extremist opposition Russian elements on the other. To the end of the tsarist period, our relations with Russia were coldly formal, punctuated with repeated protests against the inhumanities of a decadent governmental order. That is why both the government and people of the United States genuinely welcomed the collapse of tsarism and the advent of the Provisional Government

<sup>1</sup> In the light of this historic precedent, it is not amiss to point out that the American naval demonstration in the Pacific (1932-33), while resented by Japan, was not protested, even indirectly, by the U.S.S.R. It was, in fact, an objective evidence, not entirely disconnected with diplomacy, of an impending political rapprochement between the United States and the U.S.S.R.

in March, 1917. Because all of the procedural formalities were fully complied with in the transfer of tsarist authority to the Provisional Government, because the ideology of the liberal provisional régime was at the moment in accord with our own gospel of democracy, because the new government promised to prosecute the war on which we were on the verge of embarking, recognition was immediately forthcoming. The ambassador of the United States, Mr. David R. Francis, hastened to notify the Secretary of State, Mr. Lansing, of the coming of revolution in the land of the tsars and to seek authority to be the first to recognize the new régime.

"This revolution," he cabled on March 18, 1917, "is the practical realization of that principle of government which we have championed and advocated. I mean government by the consent of the governed. Our recognition will have a stupendous moral effect, especially if given first."<sup>2</sup>

On the basis of the Provisional Government's coherence with our canons of democratic legitimism, permission was given within twelve hours, and on March 22, 1917, Francis declared to the assembled Provisional Government that the government of the United States recognized the new government of Russia and that he, as ambassador of the United States, would continue intercourse with Russia through the medium of the new government.<sup>3</sup> Recognition was thus frankly based on approval of the political doctrine of the incoming régime. For a second time in the history of America and Russia, there appeared to be identity of national interests. It lasted, however, only as long as the régime which espoused the democratic doctrine and the prevailing political ideology of the Allied and Associated Powers.

On November 7, 1917, the régime of the Provisional Government was ended by the arrest of the Council of Ministers and the proclamation of the Soviet Republic. According to the reports of our diplomatic representatives in Russia, the actual deposition of the Provisional Government was accomplished with relatively little resistance. Judged, therefore, from the standpoint of the actual amount of violence exerted, the *coup d'état* of the Bolsheviks was not inordinately bloody. It sufficed, however, to bring into power a political group with a program and an ideology radically dif-

<sup>2</sup> Francis to Lansing from Petrograd, March 18, 1917, No. 1107. *Foreign Relations of the United States*, 1918, Russia, I, pp. 5-6.

<sup>3</sup> Lansing to Francis, March 20, 1917, No. 1271. *Ibid.*, p. 12. Francis to Lansing, March 22, 1917, No. 1124. *Ibid.*, pp. 12-13.

ferent from that of the Provisional Government. Immediately the government of the United States was confronted with the necessity of deciding how it would deal with the new government.

On November 21, 1917, a fortnight after the *coup d'état*, Trotsky, as People's Commissar for Foreign Affairs, formally notified Ambassador Francis of the establishment of "a new government of the Russian Republic under the form of the Council of Commissaries of the People."<sup>4</sup> Francis did not acknowledge the communication, and it was resolved by the heads of the Allied diplomatic missions in Petrograd to ask their respective governments not to authorize any reply, "as the pretended government was established by force and is not recognized by the Russian people."<sup>5</sup> The argument here advanced, it will be noted, is that the Soviet régime was *a priori* illegal on account of its violent assumption of power. This was the first hypothesis on which the government of the United States based its attitude toward the Soviet régime. Lansing concurred in the course of action outlined and ordered that no replies be made to Soviet overtures, stating that the government of the United States would await developments.<sup>6</sup> The same course was urged strongly upon Lansing by the deposed ambassador of the Kerensky régime, Boris Bakhmeteff.<sup>7</sup> On the other hand, Brigadier-General W. V. Judson, the American military attaché in Russia, insisted almost from the outset that the Soviet régime was a *de facto* government and that relations should be established with it.<sup>8</sup> For this attitude, he was expressly directed by President Wilson to "withhold all direct communication with the Bolshevik government"—a phrase which impliedly admitted the Soviet régime to be a government—while the State Department ordered Red Cross and Y.M.C.A. personnel, who had apparently developed a sympathetic attitude toward the Soviet régime, to keep out of politics, as their interposition might be "fraught with grave danger."<sup>9</sup> Finally, on December 15, 1917, Lansing issued circular instructions

<sup>4</sup> Francis to Lansing, November 22, 1917, No. 2006. *Ibid.*, p. 244.

<sup>5</sup> Francis to Lansing, November 22, 1917, No. 2007. *Ibid.*, p. 245. Francis was instructed to exchange views with the Allies, but was told "that we would not bind ourselves to a course which might look to Russia as a measure of compulsion." Lansing to Francis, November 24, 1917, No. 1864. *Ibid.*, p. 248.

<sup>6</sup> Lansing to Francis, December 1, 1917, No. 1875. *Ibid.*, p. 254.

<sup>7</sup> Bakhmeteff to Lansing, December, 7, 1917. *Ibid.*, p. 255.

<sup>8</sup> Francis to Lansing, December 2, 1917, No. 2057. *Ibid.*, p. 282.

<sup>9</sup> Lansing to Francis, December 6, 1917, No. 1883. *Ibid.*, p. 289.

<sup>10</sup> Lansing to J. R. Mott, December 7, 1917. *Ibid.*, p. 290.

which stood until November 17, 1933, forbidding American diplomatic representatives in Europe and the Far East to have any official relations with Russian diplomatic officers recognizing or appointed by the Soviet government.<sup>11</sup> There was thus established a theory of non-intercourse, of non-recognition, which, although justified at different times on different grounds, remained for over sixteen years the formal policy of the United States' government.

Despite the apparent finality of the position assumed by the State Department, Ambassador Francis soon began to have doubts. On Christmas eve, 1917, he cabled Lansing, outlining his course of action and emphasizing the unexpected vitality of the Soviet régime:

This is revolution, but the fact remains that the Bolsheviks have maintained themselves in power in Petrograd and Moscow and are the *de facto* government in those cities and, although there are opposition movements, Bolshevik power is undoubtedly greatest in Russia . . . I am willing . . . to swallow pride, sacrifice dignity and with discretion do all that is necessary to prevent Russia's becoming the ally of Germany. It is possible that, having accomplished the establishing of relations with the Soviet government, the Allied representatives could influence the terms of peace and thus preserve Russian neutrality.<sup>12</sup>

A fortnight later, but before the dispersal of the All-Russian Constituent Assembly, Francis cabled that he was "inclined to recommend simultaneous recognition of Finland, Ukraine, Siberia, perhaps the Don Cossacks province, and the Soviet as the *de facto* government" of the respective areas in question.<sup>13</sup> Finally, the American legation in Copenhagen proposed to Lansing a plan whereby America would be the sole nation to recognize the Soviet régime as the *de facto* government and become the intermediary with it on behalf of all the Allied governments. In support of this proposal, the legation pointed out the likelihood of indefinite duration of the Soviet régime, the ability of the United States to maintain working relations with all factions, the separatist groups included, and, finally, America's long experience in dealing with *de facto* governments in Latin America.<sup>14</sup> This succinct survey of the situation obtaining in the first weeks of the Soviet régime reveals that competent observers on the spot—civilian, military,

<sup>11</sup> *Ibid.*, p. 317.

<sup>12</sup> Francis to Lansing, December 24, 1917, No. 2138. *Ibid.*, pp. 324–325.

<sup>13</sup> Francis to Lansing, January 9, 1918, No. 2212. *Ibid.*, p. 336.

<sup>14</sup> U. S. Grant-Smith to Lansing from Copenhagen, January 14, 1918, No. 1823. *Ibid.*, pp. 337–338.

and diplomatic—early came to a conclusion as to the probable capacity of the Soviet régime to survive. On the *de facto* character of the Soviet government from the outset, there was therefore, according to the testimony, virtual unanimity.

Needless to say, all of the foregoing proposals were rejected by Lansing. In Washington and the allied capitals, there was stubborn resistance to any overtures from or toward the Soviet authorities, based as much upon the illegal assumption of power by the Bolsheviks as upon the distastefulness of their program. To the original sin of taking power by violence, the Bolsheviks presently added another: as the price of relief from the military pressure of Germany, according to Trotsky, they were compelled by the German High Command to disperse the All-Russian Constituent Assembly,<sup>15</sup> thus destroying, in the opinion of Wilson and Lansing, the last source of legitimate authority in Russia. Judged from the standpoint of strict constitutionalism, the Bolsheviks, by February, 1918, were doubly tainted with illegality in the eyes of our State Department. Too much emphasis cannot be placed upon this fact, because its influence became exceedingly pervasive. It was a dominating preconception with President Wilson for the remainder of his administration; it steeled his previously friendly attitude toward the Soviet régime into one of implacable opposition, and was the decisive factor in the eventual decision of the government of the United States, on June 12, 1919,<sup>16</sup> to throw its support definitely into the scales in favor of Admiral Kolchak and against the Soviet régime. This deep-seated doctrine of constitutional legitimism, shared alike by Wilson and Lansing, operated as a definitive barrier to any negotiations with the Bolsheviks, at least down to the period of the Paris Peace Conference in 1919.

A third reason for withholding recognition from the Soviet régime arose in connection with the Russian endeavors to negotiate a separate peace with Germany. It is impossible to enter here into a discussion of the necessity or merits of the settlement reached by Russia and the Central Powers at Brest-Litovsk, but that it created an almost insurmountable barrier to recognition for the remainder of the war hardly needs demonstration. If the Soviet régime were recognized before the signature of the peace treaty,

<sup>15</sup> Leon Trotsky, *Lenin*, p. 15.

<sup>16</sup> For the text of the correspondence with Admiral Kolchak, cf. C. K. Cumming and Walter W. Petit, *Russian-American Relations*, pp. 337-343.

the Allied governments would be bound, by the ordinary rules of international law, to take cognizance of it, and would find their rights materially impaired by its provisions. If the treaty were signed while the régime remained unrecognized by the Allies, they could, without impairment of either their own rights or those of Russia, consider the Brest-Litovsk agreement null and void.<sup>17</sup> This, as is well known, became the final Allied attitude. Francis clearly foresaw this and cabled, February 5, 1918, that Germany would be pleased by Allied action, since peace "with Russia would mean more with Allied recognition of the Soviet government than without." "For this and other reasons," concluded the Ambassador with finality, "I cannot recommend recognition."<sup>18</sup> The long-range value of this decision, and its principal justification, lies in the fact that it permitted the Allied and Associated governments, as part of the armistice conditions, to abrogate the Brest-Litovsk peace—a step in which the Soviet government was itself only too glad to concur. The immediate effect of the decision was to stimulate plans for intervention, both in North Russia and in the Russian Far East.

For the remainder of the World War, down to the meeting of the Paris Peace Conference, the efforts of the Bolsheviks to enter into any sort of relations with the United States were predestined to be fruitless. Thus the commissioning of Litvinov as ambassador to the United States<sup>19</sup> brought no results, as the Department of State refused him a visa to enter this country, and sundry other overtures made by Chicherin, who was at the time particularly friendly to the United States, were rejected. It does not require a high degree of insight to observe in the diplomatic correspondence of the period the sincere desire of the Soviet government—virtually unchanged during the past sixteen years—to utilize potential friendship with the United States as leverage against Japanese

<sup>17</sup> It is worthy of note that the attitude expressed by the Allied governments at the time of the signing of the Peace of Brest-Litovsk declaring that "peace treaties such as these we do not and cannot acknowledge" set a distinct precedent for that part of the Stimson Doctrine dealing with non-recognition of certain types of treaties. Cf. the statement issued by the British Foreign Office on March 18, 1918, on behalf of the Allied governments. Page to Lansing from London, March 25, 1918, No. 8633. *Foreign Relations of the United States*, 1918, Russia, I, pp. 438-439.

<sup>18</sup> Francis to Lansing, February 5, 1918, No. 2336. *Ibid.*, pp. 368-369.

<sup>19</sup> G. V. Chicherin to Francis, Francis to Lansing from Petrograd, June 5, 1918, No. 1. *Ibid.*, p. 551.

intervention. Yet it was the recommendation of Ambassador Francis, made on May 2, 1918, which broke down much of President Wilson's resistance to the proposed intervention. In this dispatch Francis reveals that, as events developed in 1918, he grew more and more hostile to the Soviet authorities, insistently calling the attention of the State Department to the "principles which Lenin is aggressively championing" as a final argument against recognition.<sup>20</sup> In June, 1918, he asked that he be instructed

In event the present Soviet government abdicates or is deposed . . . to announce to the Russian people, whom this government has never ceased to consider its ally against the Central Empires, that the government of the United States will recognize that government which will be adopted by the people through their representatives chosen at an election duly called and held under safeguards which will insure an honest expression of the popular will.<sup>21</sup>

To this the Department of State gave substantial assent, describing its preference for "a government of Russia which it has reason to regard as representative of the people of Russia and chosen by their collective action."<sup>22</sup> From this it was, of course, only a short step to the support of counter-revolution. On July 31, 1918, Francis informed Lansing of the withdrawal of the Allied diplomatic missions to Murmansk, on the Arctic Ocean. The British military and naval leaders, with Anglo-French troops and fifty American sailors then proceeded to Archangel. "An anti-Bolshevik revolution is planned there for today," declared the Ambassador, "and if successful, as anticipated, then the Allied forces will land at Archangel without opposition on August 2."<sup>23</sup> From this time on the rupture was certain, and it was only a matter of time until all American military and diplomatic personnel were withdrawn. The interlude of semi-official dealing with the Soviet régime was over. The United States was in the camp of counter-revolution. It stayed there for two years, until the end of 1920.

Two episodes during this period deserve mention. The first was

<sup>20</sup> Francis to Lansing from Vologda, May 2, 1918, No. 140. *Ibid.*, p. 521.

<sup>21</sup> Francis to Lansing from Vologda, June 3, 1918, No. 239. *Ibid.*, pp. 550-551.

<sup>22</sup> Lansing to Francis, June 12, 1918, No. 177. *Ibid.*, p. 562.

<sup>23</sup> Francis to Lansing from Murmansk, July 31, 1918, No. 342. *Ibid.*, p. 624. Francis was perfectly candid, after the fact, in declaring to his government that the Archangel government, from the outset, rested on Allied bayonets: "Found new government here," he cabled, "but realize same would not have succeeded if Allied forces had not landed, neither would it survive if Allied troops taken away." Francis to Lansing from Archangel, September 3, 1918, No. 379. *Ibid.*, p. 518.

the mission of Mr. William C. Bullitt to Lenin in March, 1919, as the personal emissary of President Wilson. Although the mission failed, for reasons into which we need not enter, it revealed the willingness of the Soviet government to discuss peace on the basis of the *de facto* recognition of all existing governments on Russian soil, "until the peoples inhabiting the territories controlled by these *de facto* governments shall themselves determine to change their governments."<sup>24</sup> This was a formula permitting self-determination, but it endeavored to pledge the Allied governments to recognize in advance whatever form of government, even a Soviet régime, the inhabitants might create. It was an interesting formula, which undoubtedly endeavored to create a sort of legitimacy for future Soviet régimes on the same basis as Francis had hoped to lay down for a future anti-Bolshevik government. The proposals were rejected, but they undoubtedly contained most of the basic essentials of a settlement, particularly as the Soviet government pledged to abstain from subversive propaganda against the governmental institutions of other countries and explicitly agreed to acknowledge, as co-successor with the other parts of the Russian Empire, "responsibility for the financial obligations of the former Russian Empire to foreign states parties to this agreement and to the nationals of such states." The rejection lost for the United States an opportunity which has never recurred.

The second episode concerned the mission of Ludwig Martens as ambassador of the Soviet Republic to the United States. Being already in the United States, Martens could not be refused a visa; hence the Commissariat for Foreign Affairs furnished him credentials and a long memorandum for presentation to the State Department, which was forwarded on March 19, 1919.<sup>25</sup> The State Department returned no answer. Martens was eventually arrested, his offices rifled in a moment of unusual zeal by the Lusk Committee, and a deportation order was lodged against him, although he was allowed to leave the United States on his own accord, on January 21, 1921, shortly before the Republican administration entered office. While the action of the State Department in refusing to receive him was thoroughly in consonance with the prin-

<sup>24</sup> Draft Treaty drawn up by Representatives of the Soviet Government and William Bullitt, in Russia on behalf of President Wilson, March 12, 1919, Art. I. *The Soviet Union and Peace*. Document 17, pp. 66-67.

<sup>25</sup> *Russian-American Relations*, pp. 320-329.

ciples on which it had decided in 1918, it cannot be said that Martens conducted himself with any more impartiality and aloofness from internal politics than had Francis in his last months in Russia. One can only conclude with the late Professor Dennis that when Martens participated in meetings directed to the ultimate overthrow of the American government, his possible diplomatic usefulness was at an end.<sup>26</sup>

In the last months of the Democratic administration, after Mr. Lansing had disappeared from the political scene, it was left to Mr. Bainbridge Colby, his successor as Secretary of State, to mobilize new arguments against recognition, either of the Soviet régime or of the independent countries which had effected their separation from Russia. Declaring that he recoiled from the recognition of the Bolshevik régime and the dismemberment of Russia, Colby urged that all decisions concerning sovereignty over territories of the former Russian Empire he held in abeyance until Russia was no longer helpless in the grip of a non-representative government.<sup>27</sup> This theory sounds strangely like the legitimist doctrines of Baron Tuyll in 1823, denying recognition to all *de facto* governments in Latin America. Nor is the lineage of this doctrine hard to find. I have it on the authority of an eminent Baltic diplomat that although Colby promulgated the doctrine, the deposed Kerenskist ambassador Bakhmeteff had a great deal to do with its phrasing. One of the last utterances of President Wilson before his retirement from office carried the doctrine a step farther, when he asked for "a public and solemn engagement among the Great Powers not to take advantage of Russia's stricken condition and not to violate the territorial integrity of Russia."<sup>28</sup> It is apparent that Wilson, who, like Alexander I, was regarded at the height of his power as a liberator, had come in a short space of time to champion a sterile and empty conservatism, seeking to freeze a seething and tempestuous world in the cold rigid mold of constitutionality.

The remainder of Colby's argument was largely moralizing: With the pontifical assurance of a prelate, he proclaimed:

It is not possible for the government of the United States to recognize the present rulers of Russia as a government with which the relations

<sup>26</sup> A. L. P. Dennis, *Foreign Policies of Soviet Russia*, p. 468.

<sup>27</sup> Louis Fischer, *The Soviets and World Affairs*, Vol. I, p. 306.

<sup>28</sup> Wilson to Paul Hymans, January 18, 1921. *New York Times*, January 21, 1921.

common to friendly governments can be maintained. This conviction has nothing to do with any particular political or social structure which the Russian people themselves may see fit to embrace. It rests upon a wholly different set of facts. These facts, which none disputes, have convinced the government of the United States, against its will, that the existing régime in Russia is based upon the negation of every principle of honor and good faith and every usage and convention, underlying the whole structure of international law; the negation, in short, of every principle upon which it is possible to base harmonious and trustful relations, whether of nations or of individuals. . . . In the view of this government, there cannot be any common ground upon which it can stand with a power whose conceptions of international relations are so entirely alien to its own, so utterly repugnant to its moral sense.<sup>29</sup>

And yet within a few months of this pronouncement Colby, according to his official biographer, was engaged in an endeavor to utilize the good offices of a great Swedish statesman, Hjalmar Branting, to enter into an agreement with Lenin for "the voluntary liquidation of the dictatorship, the basing of the government of Russia upon the 'sanction of the authentic organs of the Russian people'" with assurances of "immediate recognition of any Russian government emanating from a truly representative movement of the general character suggested."<sup>30</sup> Verily constitutional legitimism dies hard.

But if the Democratic administration expected its Republican successor to follow this line of policy, it was doomed to disappointment. The objective remained the same, but the reasons were radically altered. Taking advantage of the announcement of the New Economic Policy, Secretary Hughes enunciated indirectly to Litvinov the economic bases of Russo-American relationships. These were predicated upon the safety of life, the recognition by firm guarantee of private property, the sanctity of contract, and lastly the rights of free labor.<sup>31</sup> Here was a program based on a new conception of legality and economics, sufficiently at variance with even the milder mood of the New Economic Policy to block all hope of recognition. Mr. Hughes, however, did not abandon our previously announced position of moral trusteeship and solicitude for the maintenance of the territorial integrity of Russia<sup>32</sup>

<sup>29</sup> *International Conciliation*, October, 1920, p. 465.

<sup>30</sup> *The American Secretaries of State and their Diplomacy*, Vol. X, "Bainbridge Colby," by John Spargo, pp. 206-207.

<sup>31</sup> Hughes to the American consul at Tallinn, March 25, 1921. *New York Times*, March 26, 1921.

<sup>32</sup> *The American Secretaries of State and their Diplomacy*, Vol. X, "Charles Evans Hughes," by Charles Cheney Hyde, Chap. IX (Relations with Russia, pp. 280-282).

until the occupying Japanese forces in Siberia had withdrawn in the summer of 1922. The doctrinal pronouncements on this point had served their purpose. Thereupon we promptly and unreservedly recognized the Baltic states.<sup>33</sup>

A year later, on July, 19, 1923, Mr. Hughes formally abandoned the doctrine of constitutional legitimacy by declaring: "We are not concerned with the question of the legitimacy of a government as judged by former European standards. We recognize the right of revolution and we do not attempt to determine the internal concerns of other states." At the same time, he asserted that the principal obstacles lying in the way of the restoration of Russo-American relations were the "repudiation of the obligations inherent in international intercourse," the lack of assurances that our citizenry would be exempt from "arbitrary detentions," the failure of the Soviet régime to abandon its "policy of confiscation" and to give up its purpose "of destroying existing governments wherever they can do so throughout the world." While this spirit of destruction remained unaltered, economic considerations could not be allowed to determine the question of recognition. Before recognition could be considered, evidence would have to be forthcoming of the desire of the Russian authorities to "observe the fundamental conditions of international intercourse" and to abandon their "persistent efforts to subvert the institutions of democracy as maintained in this country."<sup>34</sup> It remained for Mr. Coolidge, in his message to Congress on December 4, 1923, to lay down the classic statement of the new economic legitimism which superseded the Lansing-Colby doctrine:

While the favor of America is not for sale, I am willing to make very large concessions for the purpose of rescuing the people of Russia. Already encouraging evidences of returning to the ancient ways of society can be detected. But more are needed. Whenever there appears any disposition to compensate our citizens who were despoiled, and to recognize that debt contracted with our Government not by the Czar but by the newly formed republic of Russia; whenever the active spirit of enmity to our institutions is abated; whenever there appear works meet for repent-

<sup>33</sup> State Department press release, July 28, 1922.

<sup>34</sup> Hughes to Samuel Gompers, July 19, 1923. *New York Times*, July 20, 1923. It is interesting to note that of the four outstanding issues mentioned by Hughes, three figured prominently in the Soviet-American settlement of November 16, 1933. Hughes' pronouncement, it can now be seen in retrospect, marked the beginning of a realization that the basic issues dividing the two countries were legal and economic rather than moral. This despite the subsequent outburst of neo-Puritanism on the part of the President of the United States.

ance, our country ought to be the first to go to the economic and moral rescue of Russia.<sup>35</sup>

Virtually all of the subsequent pronouncements of the Republican administrations were variations on this theme of Mr. Coolidge—economic obliquity, innate depravity, inescapable perdition attach to the Soviet economic order; there must be, accordingly, confession, conversion, atonement before “economic and moral rescue” can be effected. The ensuing five years of rumination did not, however, convince the Soviet authorities of the necessity of responding to the new Calvinism.

With the coming of the Hoover administration, nothing changed officially. Mr. Stimson replaced Mr. Kellogg, the cry of propaganda lessened, but outbursts about dumping took its place. In the long run, however, the government of the United States expressly abandoned *all* doctrines of constitutional legitimacy. Speaking before the Council on Foreign Relations in New York City on February 6, 1931, Secretary Stimson reviewed the difficult course of our relations with Latin America since the abandonment of the *de facto* principle by Woodrow Wilson and declared in unequivocal terms that

The present administration has refused to follow the policy of Mr. Wilson and has followed consistently the former practice of this government since the days of Jefferson . . . to base the act of recognition not upon the question of the constitutional legitimacy of the new government, but upon its *de facto* capacity to fulfill its obligations as a member of the family of nations.<sup>36</sup>

One cannot refrain from inquiring whether Mr. Stimson surveyed the whole political horizon before he set forth this doctrine. It is, however, quite possible that he intended, as one of his subordinates later declared, to hold the Soviet régime to account for “its failure to respect the international obligations of preceding governments”<sup>37</sup>—whether to the third and fourth generations was not specified!

By the last days of the Hoover administration Russian-American relations presented a most interesting paradox, falling little short

<sup>35</sup> “The Recognition Policy of the United States, with Special Reference to Soviet Russia,” *Foreign Policy Association Information Service*, Supplement No. 3, November, 1926, pp. 25–26.

<sup>36</sup> “The United States and the Other American Republics: A Discussion of Recent Events,” *Publications of the Department of State*, Latin American Series, No. 4, pp. 6, 8.

<sup>37</sup> Green H. Hackworth, “The Policy of the United States in Recognizing New Governments during the Past Twenty-five Years,” *Proceedings of the American Society of International Law*, 1931, p. 131.

of the farcical. Representatives of the two governments continually faced each other at Geneva, as officially accredited plenipotentiaries whose full powers enabled them to participate in common in the final act of a disarmament conference; there were instances of direct reply, via the rostrum, of American to Soviet delegates, and vice versa—and yet there was no diplomatic recognition. Both states had announced their respective adherence to the *de facto* principle in general, without thereafter assuming diplomatic relations. In the Far East, this principle came to a severe test in connection with the state and government of Manchoukuo, whose existence and functioning were certainly not in question. Yet neither Russia nor the United States accorded it recognition. Why? Because of the emergence of a new "legitimism," deduced by Mr. Stimson, with the rigid logic of a Calvinistic theologian, from the positive stipulations of the Kellogg Pact by which both the Soviet Union and the United States are legally bound. It does not vitiate the substantial merit behind the Stimson Doctrine to point out how ludicrous appeared the spectacle of two great states, both born of revolution, refusing to a third and to its government any type of recognition because that third state was tainted with the illegality of coming into being by means in contravention of a solemn covenant binding two régimes which did not recognize each other! Surely the cup of anomalies was filled to overflowing. It was high time, both politically and legally, for change.

That change began early in the Roosevelt administration, though not with the dramatic suddenness which would have attended a formal invitation to a Soviet commissar to join the long list of distinguished diplomats who came to the White House for consultations in April and early May, 1933. There is evidence that some sectors of American public opinion, chiefly of Revolutionary ancestry or clerical temperament, counted on exactly such a move, and mobilized as pressure groups to prevent it.<sup>38</sup> Instead, there had to be a more subtle overture, so well timed that the first contact with Moscow could be made by American initiative and amid popular acclaim. So, while public opinion was focussed on Geneva and Berlin, the President, on May 16, 1933, sent out his message

<sup>38</sup> A check by the reported activities of these pressure groups reveals that their "spring offensive" opened on April 8 with the onslaught of the "Paul Reveres" and closed on April 20 with a broadside by the Rev. Dr. E. A. Walsh. Cf. *New York Times*, April 9-21, 1933.

respecting disarmament and non-aggression—topics on which a cordial response could be anticipated from Moscow—to the nations, addressing it, with almost proletarian directness and without the use of "His Excellency," to "President Michail Kalinin, All Union Central Executive Committee, Moscow, Russia."<sup>39</sup> Official messages had been sent by Woodrow Wilson to Soviet Congresses, but never to the Central Executive Committee or its titular head; even the Bullitt mission had been an unofficial sounding with no commitments. Here was a direct communication from chief of state to chief of state—an exchange of *lettres de cabinet* sufficient in itself, as I have pointed out elsewhere,<sup>40</sup> to effect *de jure* recognition. The significance of the move was not lost upon Moscow, particularly as the President chose, to begin his message, words which expressly accorded to Kalinin the full attributes of a legally qualified representative of the Soviet régime.<sup>41</sup>

The promptness and tone of Kalinin's reply left no doubt as to the ability of the Narkomindel to interpret at its true value the President's move; it was rightly valued as an overture for a return to normalcy, and the response was couched as from one recognized government to another,<sup>42</sup> indicating the willingness of the Soviet government to coöperate with the United States on various matters, both at Geneva and at London. This exchange may now be evaluated as having broken the diplomatic ice; it was left to Mr. Bullitt, attached to the American delegation at the London Conference, to take up the overture of Kalinin by corridor conversations and informal intercourse with the Soviet envoys. Meanwhile, negotiations regarding credits were opened between the Reconstruction Finance Corporation and the Amtorg officials. It is significant that these material approaches toward normalcy were not undertaken *before* the significant exchange of notes just referred to. They indicate that solid juridical ground for future relationships could be felt under foot. We were out of the quagmire of misunderstanding. It was now merely a matter of time and circumstance until normalcy could be restored.

<sup>39</sup> Press release of the assistant secretary to the President, May 16, 1933.

<sup>40</sup> *In Quest of a Law of Recognition* (University of California Press, 1933), pp. 20-21.

<sup>41</sup> "A profound hope of the people of my country impels me, as the head of their government, to address you, and through you the people of your nation."

<sup>42</sup> "I have received your message of political and economic peace to all States. . . . The Soviet government, expressing the will of the peoples of the Soviet Union, has never ceased, etc." *Soviet Union Review*, Vol. XI, No. 6, p. 137 (June, 1933).

The occasion presented itself in October, 1933, at a time when tension in Soviet-Japanese relations was acute and there was fear of an open breach or a possible Japanese aggression on Soviet territory. Despite the fact that there was a new press campaign against recognition, and that domestically the moment seemed signally inauspicious, President Roosevelt moved openly to close the long-standing breach. In a note of October 10 to Kalinin he indicated his desire to end "the present abnormal relations" between America and Russia, referred to the century-long "happy tradition of friendship," and deplored the lack of facilities for direct communication. Deeming existing difficulties soluble only by direct conversations, he invited the Soviet government to designate representatives to explore with him personally all outstanding questions, carefully pointing out that "participation in such a discussion would, of course, not commit either nation to any future course of action." The overture was wholly one of national diplomacy and disregarded possible international repercussions.

Kalinin, concurring in the President's analysis, declared in reply that the situation was "abnormal and regrettable," voiced his opinion that only direct relations could obviate "difficulties present or arising," and designated Litvinov as his emissary. An entirely new turn was given the discussion, however, by Kalinin's mention of the "unfavorable effect" of the absence of official relations "not only on the interests of the two States concerned, but also on the general international situation, including the element of disquiet complicating the process of consolidating world peace and encouraging forces tending to disturb that peace." This reply, framed at the moment when Germany left the Disarmament Conference, bore unmistakable reference to the Reich on the one hand and to Japan on the other. The Kremlin did not fail to see that there was, at this historic moment, a closer ideological affinity between two countries with large-scale experimentation in planned economies than between Moscow and either Tokio or Berlin. It is not too much to say that strong resentment, in both America and Russia, toward the accentuation and excesses of atavistic nationalism in both Germany and Japan has a direct part in psychologically ameliorating Soviet-American relations.

With Litvinov in Washington conferring directly with the President, formal diplomatic recognition was all but assured. Too much was at stake to permit any slip. In consequence, the dis-

cussions at once tackled fundamentals. They eventuated, on November 16, in a series of agreements and understandings recorded in an elaborate exchange of notes and declarations,<sup>43</sup> collectively constituting a comprehensive settlement unparalleled in American diplomacy, but not in the diplomatic annals of the Soviet Union.<sup>44</sup> Virtually all of the diplomatic settlements between Russia and her neighbors, and between Russia and the principal Great Powers, have involved a series of assurances—formal exchanges of notes, unilateral or joint declarations, *plus* a political treaty, chiefly because of the previous existence of a state of war between the parties. The Soviet-American settlement is almost unique<sup>45</sup> in that there is no political treaty. More properly speaking, the settlement, while cast into non-treaty form, actually embodies stipulations lifted almost bodily from well known Soviet treaties, and roughly follows the *schema* of the earliest Soviet settlements with capitalist powers.

While there had been much discussion as to whether the Soviet government would assent to giving various undertakings *before* recognition was extended, the problem, as such, was not raised. Nowhere in the correspondence is the term recognition mentioned, *expressis verbis*.<sup>46</sup> Actually, the act consummating complete diplo-

<sup>43</sup> As released on Friday, November 17, by President Roosevelt, these consisted of five exchanges of notes, two declarations, and one joint statement. These are given in the Department of State's Eastern European Series, No. 1, "Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics (Washington, Govt. Prtg. Off., 1933).

<sup>44</sup> The settlements most closely resembling that with the United States are the Soviet settlement with China (May 31, 1924) and Japan (January 20, 1925). The former included two treaties, seven joint declarations, and one exchange of notes; the latter, one treaty, three protocols, one unilateral declaration, one set of notes, and one annexed note, together with a protocol of signature. League of Nations Treaty Series, Vol. 37, pp. 175-201, and Vol. 34, pp. 31-53. Cf. *American Journal of International Law*, Supplement, Vol. 19, No. 2 (April, 1925), pp. 53-62, 78-87.

<sup>45</sup> The only comparable situation was that of Czechoslovakia, which denied the existence of any state of war between the Czechoslovak Republic and Soviet Russia. In reply to an offer of peace negotiations by Chicherin in March, 1920, Dr. Beneš stated that, there never having been a state of war between the two countries, no such move was necessary. Cf. *Gazette de Prague*, Vol. I, No. 1, April 24, 1920.

<sup>46</sup> The only mention of recognition in any of the collateral documents occurs in a note from Acting Secretary of State Phillips to Serge Ughet, the residuary legatee of the Kerensky régime, referring, under date of November 16, to "the recognition of the Union of Soviet Socialist Republics by the Government of the United States," but without specifying when the recognition took place. *New York Herald-Tribune*, November 18, 1933.

matic recognition took the form of the first exchange of notes; all other undertakings, while of the same date, were in fact signed subsequent to this exchange. It is thus possible for the Soviet government to claim that these undertakings were reached *after* formal recognition, while it is equally possible for meticulous constructionists in the United States to maintain that the recorded understandings were reached preliminary to recognition. This merely serves to illustrate that the art of face-saving is as necessary in Washington and Moscow as it traditionally is in the Orient.

An appraisal of the significance of the settlement involves an estimate of the value of (1) the promises of future collaboration, (2) the pledges regarding propaganda, (3) the guarantees of religious freedom, (4) the stipulations regarding legal protection of nationals, and (5) the waiver and extinction of certain claims. There can be no question that the pledge of coöperation of the two nations for their mutual benefit and for the preservation of the peace of the world, made in the first exchange of notes, possesses far-reaching significance. If adhered to, it should end the period of sterile and empty diplomacy such as characterized Russian-American relations before 1917, and inaugurate an era of active collaboration. It should give new leverage to both countries in international conferences and in relation to problems where both have substantially similar policies, as in the Far East. Having refound a lost friendship, and computed also the common denominator of several policies, Russia and America give promise for the future not only of normalcy of relationships but of quick and continuous contact.

The problem of propaganda—so often the *bête noire* of capitalist countries' relations with the Soviet state—has been settled by the giving of broad guarantees embracing almost every regulable aspect of propagandist activity. Modelled on the provisions of the Soviet-Estonian peace, the Anglo-Russian trading agreement, and the Soviet-Japanese settlement, these guarantees are more comprehensive in scope and applicability, particularly as regards colonial dependencies and subventioned organizations, than any which the Soviet government has hitherto offered to any nation. In this sense, they constitute a large-sized diplomatic concession to the United States. The willingness of the Soviet government to make such accommodations appears to be based as much on their reciprocal character as on the fact that the Soviet régime, having gone through an expansive, evangelizing stage of militant com-

munism, is now deeply desirous of "consolidating communist construction" within its own domain and has unquestionably abated its early missionary zeal. For the United States, the counter-pledge will involve continuous federal vigilance over activities of individuals or groups contravening many of our existing neutrality laws, e.g., respecting filibustering expeditions. Of prime significance is the American pledge to stamp out the activities of persons having "as an aim the overthrow, or the *preparation for the overthrow* of, or bringing about by force of a change in, the political or social order of the whole or any part of the U.S.S.R., its territories or possessions." It will be interesting to observe whether organized anti-Soviet groups in the United States, irrespective of whether they be former Russian nationals or American citizens, will, after a decade and a half of complete immunity, feel the heavy hand of the federal authorities.

The question of religious guarantees presented peculiar difficulties. Here the initiative was taken by Mr. Roosevelt in demanding for American nationals in the Soviet Union rights which he unilaterally conceded to foreign nationals in the United States. These rights received a degree of definition which indicates that interested religious organizations had made their cumulative *desiderata* very clear to both the President and the State Department. Litvinov's reply was most ingenious, consisting of itemized formal acquiescence in the American demands, accompanied by elaborate citations of existing Soviet law, to give clear-cut content—and limitations—to the rights conceded. So far as the Soviet government is concerned, these rights are strictly one-sided, as no corresponding religious or anti-religious rights were, according to the documentary evidence, claimed by Moscow. The American victory on this point looks very large, but the guarantees must operate, in practice, subject to the limitations imposed by the Soviet conception of public order and safety, and Soviet tax ordinances. The present extreme solicitude of the United States over the religious rights of its nationals is a far cry from the day when Jefferson, in concluding a treaty with Tripoli,<sup>47</sup> laid it down as a fundamental postulate in our diplomacy that "the Government of the United States is in no sense founded on the Christian religion" and that no considerations arising out of matters of religion would

<sup>47</sup> Treaty with Tripoli (November 4, 1796), Art. XI. W. M. Malloy, *Treaties, Conventions, etc. between the United States and Other Powers*, Vol. II, p. 1786.

be allowed to trouble our mutual relations. This was doubtless true only in an era that knew not the varied techniques of religious pressure groups.

On the issue of legal protection for American nationals, regarding which bar associations do not appear to have been overly solicitous, all that the Soviet government was prepared to concede was most-favored-nation treatment, modelled on the Soviet-German treaty of October 13, 1925. More it appears to have been impossible to extort. In particular, the right to private interviews between accused and consular or diplomatic representatives was not granted. In consequence, President Roosevelt proceeded, in his acceptance of the Soviet formula, to do a little defining, which Litvinov appears to have at least tacitly accepted, especially of "the right [of Americans] to a fair and public speedy trial" and "the right to be represented by counsel of *their choice*." As matters stand, it would appear that American nationals will enjoy tolerably good protection in Soviet courts—a protection hardly likely to be troubled, in view of Litvinov's explanations, by unfounded charges of economic espionage. Again it is to be noted that the guarantees are entirely one-sided, as no counter-demands were put forward in respect of Soviet nationals potentially falling afoul of, say, American criminal syndicalism legislation.

The degree of economic liquidation effected by the settlement, while by no means complete, considerably simplifies matters. The debts of the tsarist régime to American nationals, as well as those of the Kerensky government to the United States, were left for subsequent negotiation. What was actually accomplished was to leave undisturbed by Soviet hands the settlements reached in American courts in the course of a dozen or more years of private litigation. The Soviet government preferred to keep its hands entirely free from capitalist court awards or administrative decisions, renouncing its rights to such small grist as our judicial machinery has hitherto ground out, or such arrangements as the federal government has effected "relating to property, credits, or obligations of any government of Russia or nationals thereof." This blanket non-interference with the workings of the American judiciary is likely to create, in the long run, a far-reaching legal presumption—that the United States should accept with equal finality the judicial or administrative decisions of the Soviet régime regarding American properties, credits, or obligations in the Soviet

Union. It is, of course, quite possible that the prospective "final settlement of claims and counter-claims" may eventuate otherwise, but the legal postulates of future Soviet action in this regard appear to be already clear.

The final part of the settlement was distinctly political. While ostensibly dealing with military and economic claims, it in fact marked the complete liquidation, politically and legally, of the American military adventure into the Russian Far East in 1918-19. In a single note to Mr. Roosevelt, Litvinov waived completely "any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia or assistance to military forces in Siberia subsequent to January 1, 1918." This cleared completely the Far Eastern angle of Soviet-American relations. The reasons given by the Soviet commissar veil only thinly the realities of the situation. To strengthen the Soviet Union's position in the Far East, there must be a clean bill of health—a complete legitimization of status and possession. In consequence, Litvinov professed both ignorance and enlightenment as to the real attitude of the United States between 1918 and 1921. There develops, consequently, in his note a studied anachronism: the United States is pictured as having striven during this period to affirm and safeguard "the inviolability of the territory of the Union of Soviet Socialist Republics." There is more than mere chronological carelessness here: there is the obvious intention to affirm as of 1933, as against any possible challenger, the undeviating policy of the United States<sup>48</sup> upholding the territorial *integrity* of Russia—a concept which did not prevent the military occupation of the Maritime Province—by restating it in terms of territorial *inviolability* consonant with Litvinov's London Convention of July 4, 1933, whose provisions would brand a military occupation as *prima facie* aggression. As compared with the importance of parrying a potential Japanese thrust at the Soviet Far East in 1933, the value of pecuniary claims for the events of

<sup>48</sup> Cf. the statement issued by the Department of State on August 3, 1918: ". . . the Government of the United States wishes to announce to the people of Russia in the most public and solemn manner that it contemplates no interference with the political sovereignty of Russia, no intervention in her internal affairs—not even in the local affairs of the limited areas which her military force may be obliged to occupy—and *no impairment of her territorial integrity, either now or hereafter.* . . . The Japanese Government, it is understood, will issue a similar assurance." *Foreign Relations of the United States*, 1918, Russia, II, p. 329.

1918 was insignificant. Therefore a successful bargain was driven, and the Soviet government "agreed" to waive claims. The political compensation was more than adequate. It once more left Siberia under special American solicitude and reëxpressed a policy explicitly America's since the time of the Washington Conference.<sup>49</sup> Thereafter the United States could, with great magnanimity, conveniently withdraw her fleet from Pacific waters.

Viewed objectively, there is now a new and basic normalcy in Soviet-American relationships. It is explainable partly in terms of the changed political and economic ideology in the United States; partly in terms of the conscious realization, at Washington and Moscow, of common interests throughout the world. The sixteen-year misunderstanding, born of the ill-starred interventionist policies of reactionary American diplomats in the field, has been cleared up by the direct diplomacy of the Roosevelt régime, which has established the major orientation points to guide both countries. The inert ideology of preceding administrations, content with playing with the shadows of a defunct régime, has been supplanted by a dynamic conception of the rôles which the two countries must inevitably play into the long-distant future. This *rapprochement* is not, as were the earlier intimacies of the two countries, the accident of a momentary conjuncture of auspicious circumstances temporarily neutralizing the basic antagonisms of antithetical régimes; rather is it the rational resultant of a conscious reorientation of historic forces, the scientific product of planned change.

<sup>49</sup> It need hardly be recalled that the agenda of the Washington Conference of 1921 placed the territorial and administrative integrity of Siberia first on the topics to be discussed after China had been dealt with. Obviously the United States had in mind guarantees for Siberia quite comparable to those given China in the Nine Power Pact. Cf. Report of the American Delegation, in Senate Document 126, 67th Cong., 2nd Sess., p. 790.

## THE ECONOMICS OF THE RECOVERY PROGRAM

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From Aristotle's day to this, the subject-matter of economics has been recognized by political scientists to affect very greatly the institutions with which the latter deal. In our own time, studies like those of Professors Charles A. Beard and Arthur N. Holcombe have carried the great bulk of American political scientists over to a primarily economic interpretation of political history. It is not too much to say that there has been some danger of political scientists conceding too much common ground to the economist's psychology and methods.

The economist, on the other hand, has for some decades at least, both in this country and abroad, had scant patience with political science. He has given even less recognition to the bearing of political factors upon the simple assumptions upon which his economic science too often rested. F. Delaisi characteristically wrote of *Political Myths and Economic Realities*, without much regard for a test of whether the myths might not be the more powerful realities in terms of survival value. "Politics" was something which, in an annoying and "unscientific" way, occasionally interfered with the operations of man as a profit-making animal. Politics was rarely thought of as a statement of those psychological motives and controlling social institutions which corrected or conditioned at every stage the jejune motivation and the mechanical equations upon which most economic generalizations rested.

Within the past years, however, economists like J. A. Hobson and A. C. Pigou have begun to inquire into the nature of "welfare economics." J. M. Keynes, too, has made a notable confession in the August (1933) *Yale Review* of the necessity of allowing politics some weight in the art of estimating any economic trends. Perhaps it may not be too much to hope that this paper will serve a dual purpose: not only to bring to political scientists a consideration of the economic factors which condition a political program like that of the New Deal, but equally to recall to our brothers among the economists that man is, after all, primarily a political animal. He *will* try to control events.

I propose to take as my text a criticism of the New Deal as given in a rather typical and moderate statement of the economists'

position. Some of my colleagues at Harvard find it a simple business to judge the economic merits of the President's program;<sup>1</sup> the seven worthies who recently pronounced sentence on the New Deal were singularly unanimous for academic critics. Their simple answer to the merits of the program was like President Coolidge's laconic summary of the preacher's sermon on sin: "Against it." With one or two exceptions of a not very vigorous character, this group among the Harvard economists took the line that the program was a mistaken one from start to finish.

Professor Schumpeter brought all his persuasiveness and learning to bear on proving that "depressions" have in the past cured themselves and that government interference does nothing but harm, aside from measures of relief necessary to avoid revolution; political causes may help to bring on depressions, but political remedies cannot cure them. Professor Edward Chamberlin, in a brief but lucid and subtle analysis of "purchasing power," pointed out the danger that "consumers' purchasing power" might be stimulated by public works programs and the like without giving permanent help either to private employing power as a whole or to the heavy, "capital goods," industries in particular.<sup>2</sup>

In what is perhaps the most balanced effort in the volume, Professor E. S. Mason, after showing what conditions in "Controlling Industry"—or their lack—had produced the New Deal, makes the pithy criticism that the codes as at present conceived necessarily must raise prices and tend to create cartels, or they will be meaningless. If they raise prices and wages in a manner that is "uneconomic," they will be a positive danger. Like most other commentators, he approves of the fair competition and publicity features for price policy in the codes for the trade associations; he sees the social gain of stamping out child labor and racketeering. But he fears, rightly, the price-fixing elements of the codes, as much in the "open price" and "marketing agreement" provisions

<sup>1</sup> *The Economics of the Recovery Program*, or as the publisher's jacket chose to call it: "a candid and vigorous discussion of the New Deal by seven Harvard economists." The names of Professors Taussig, Gay, Bullock, Burbank, Monroe, Usher, and others were absent, and a group of half a dozen tutors chose to differ by sending a joint letter to the President assuring him of their support of his program, particularly of his monetary policy.

<sup>2</sup> This is the main burden of Leonard P. Ayres' criticisms. The opposite economic theory has as its most cogent expositor John A. Hobson, especially in his *Work and Wealth*.

as in the more direct instances. He is also properly skeptical of the wisdom of giving a code authority power to limit the investment of new capital in an industry, as is contemplated in the cotton textile trade code. But he rests these assumptions on a largely undefended premise: that competition is the only method of preventing price gouging and that political regulation is hopeless as a means of controlling monopolistic tendencies to raid the national income for an "uneconomic" share.

The other essays include a very judicious, though somewhat non-committal, analysis of the monetary policies of the government by Dr. S. E. Harris, and some other analyses showing that, in the opinion of the writers, none of the classes which are alleged to be the beneficiaries of the New Deal will derive much real help from it—farmers, laborers, or middle class. In a concluding chapter, Dr. O. H. Taylor, taking to heart the political theorists who are dearest to many economists because of the similarity of their simple psychology of motivation—namely Machiavelli and Hobbes—has some sage observations to make on the inevitability of political pressure groups upsetting the apple-cart of sound economics. But he has little hope that political control can cure unsound economics.

My own feelings about these efforts of my colleagues to stick to Harvard's motto of *veritas*, even at the cost of saying some unpleasant things about a Harvard man's New Deal, are considerably mixed. But so are the policies behind the New Deal. How is it possible to reconcile the new land settlement policy, not limited to mere subsistence farming, with the strenuous efforts of the A.A.A. to discourage farm production? How can we increase our foreign markets without being willing to absorb more goods? How can we buy gold and still hope for world prices to rise? It looks like a case of Don Quixote (through Stephen Leacock's version of Cervantes), who mounted his horse "and went riding off rapidly in every direction." This question has obviously presented itself to Secretary Wallace, as witness his recent thoughtful pamphlet *America Must Choose*.

In favor of the economists' analysis is the sound proposition that if recovery is to come by capitalist methods, capitalism must be given a chance. A capitalist economy requires the possibility of real profits and an ultimate adjustment of economic forces by the play of the market. Even if one accepts the capitalist methods

and aims, as the New Deal professes to do, against these economists' analysis is the quite elementary proposition, nevertheless true, that when political interferences have falsified the hypothesis of a free market so completely as was true in 1932, drastic political remedies must sometimes be applied to allow economic forces to come adequately into play. An additional and quite important political factor that the economic physician is apt to neglect is the psychology of the patient.<sup>3</sup> Tell him to bear up bravely and suffer another period of helplessness in order to let the system purge itself, and he *may* take advice. But if he is in acute pain and very much depressed, almost any symptoms of easement and recovery will increase his morale and hasten his cure. *The will to get well* is important. The psychology of business cycles is sometimes curiously like a mild attack of manic-depressive insanity, both on the up-swing and the decline. "Depression" is a well-chosen word.

In fact, just these psychological factors have been neglected by most of the seven Harvard critics—even though they are accused in some quarters of echoing the words sometimes attributed to the restored Bourbon: "*Je n'ai rien oublié—ni rien appris!*" The conflicting elements in the Administration's program are due partly to a desire to leave political doors open, and partly to a question of *timing* the moment to change one policy for another.

But the economist is quite right in thinking that organic or chronic ailments are not to be treated in this manner. My quarrel with their diagnosis, on the whole, is that they treat the patient's constitution as sound enough up to 1929 or 1930, whereas radical treatment for the disease of special-interest legislation and an ungovernable fancy-flight were indicated long before then. The banking system required drastic overhauling. The tariff system had already pushed us parlous close to economic isolation and the ultimate loss of our foreign trade and loans. Furthermore, it was evident that the creation of a frantically inflated credit base, derived from war-loan expansion of government credit and subsequent

<sup>3</sup> A quotation from Cicero (*De Republica*) may serve to show the antiquity and the universality of this problem: "Our ancestors had perhaps a plan for the relief of debtors similar to the plan which had occurred to Solon of Athens a short time before, and which at a later date suggested itself to our own Senate. . . . It was always the practice in such emergencies, when the common people were suffering from a public misfortune, to seek some remedy and alleviation in the interests of the public safety."

speculation, had to be liquidated in some way that would require a major, a Solonian, operation. When it became evident that the cumulative forces of deflation were working so unevenly as to imply a catastrophe to the whole banking and insurance structure if they were left alone, it became equally clear that something in the nature of a monetary operation of an inflationist character would be necessary to put debts on a level that could be liquidated in any orderly manner.

The school which held that America, by retention of the gold standard in 1933, could have effected a basis for liquidating this private and public debt structure,<sup>4</sup> had to count on a concerted and immediate rise of world prices. But from the Ottawa Economic Conference in the summer of 1932 onward, Mr. Neville Chamberlain had shown that the British government was opposed to any action, monetary or not, sufficiently drastic to effect any rapid rise of prices. At the World Economic Conference a year later, Great Britain was joined in this attitude by practically all the "gold-bloc" countries, led by France and Holland, though the British policy was opposed by her own Dominions and India, and by most of the countries which exported commodities. The difference in point of view was understandable, though it may well have been short-sighted on the part of the European powers. They stood to gain, in the short run, from the extremely depressed prices of their imports which had resulted from a commodity glut of world-wide proportions. But of course they lost in exports to the degree that purchasing power was depressed in their commodity-producing overseas markets.

Nevertheless the policy of the British government and of the "gold-bloc," based on the doctrine that the artificial stimulus of a price rise would not long help producers of surplus commodities, was a known factor in the American equation. Equally it was true that Great Britain had already let sterling exchange slide so low in "finding its own level" (with the aid of a huge equalization fund) that not only were such American industries as competed for exports handicapped, but the cotton growers whose prices were largely established by Liverpool markets found themselves accepting record low prices as sterling continued to drop.<sup>5</sup> Faced by these

<sup>4</sup> This debt was alleged by economists to have reached colossal proportions, variously estimated at somewhere between 160 and 200 billion dollars.

<sup>5</sup> Those who allege that, regardless of its effect on our own price level, we should

facts, we could not stabilize at the then-existing exchange rates. If we were forced, as we were, to undertake a domestic price rise on a "go it alone" basis, we had to let the exchange rates go, and the gold standard with them. This was also indicated by the corollary problem—the possibility of repaying debts rather than scaling them down by general bankruptcy.

No doubt there was some truth in the contention that it was a surplus of commodity stocks rather than an actual gold shortage that broke world prices. But there was also the other truth that declining prices had gone along with gold sterilization and gold hoarding to such a point that even the most heroic limitation of production, such as was called for by Neville Chamberlain, would not have prevented the accumulation of stocks. Nor was limitation the proper economic method. Until a bottom had been put in prices and an upturn recorded, the forces working toward resumption of normal demand showed no evidence of reappearing. The general stagnation of trade was such that the only elasticity of demand was in shrinking, not stretching.

The American policy of going off the gold standard was something more than a psychological threat of inflation which produced a momentary upturn of prices in the United States. Coupled with the sweeping powers of inflation and (or) devaluation of the dollar as given to the President by the Thomas amendment<sup>6</sup> to the Agricultural Adjustment Act, the act of taking the United States off the gold standard produced the conditions which would make it possible to force down the value of the dollar on sterling and gold exchanges. Ultimately, the dollar was to be revalued in terms of gold, as it now has been at \$35 instead of \$22.67 an ounce (roughly a fifty-nine cent dollar in terms of its former gold content). By

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have accepted the new sterling level of something around \$3.50 in terms of gold dollars, sometimes argue that the old parities of 1929 represented an overvalued sterling in the light of trade balances. But it may be that both sterling and dollar in 1931 were overvalued for purchasing power and required a new orientation toward gold that would stop the contraction of world credit. If domestic prices in the United States respond to the new gold content of the dollar, the old parity with sterling, or something like it, may be resumed without too much difficulty for either country.

<sup>6</sup> These powers included not only the right of the Treasury to issue securities to a value of three billion dollars, to be taken up by the Federal Reserve system, but also the discretionary right to alter the weight of the gold content of the dollar to as little as fifty per cent of its former amount. A further power to issue three billion dollars of "greenbacks" was qualified by the limitation that this might be done only for the purpose of redeeming government securities.

this Act a powerful weapon was given to the Administration to force a general price rise through driving Great Britain and France to new gold-contents for their currencies. It is true that the initial stages of such a program—until the price adjustments were completed—might be deflationary in tendency toward gold currencies. But the ultimate effects would be such as to expand the total credit base, and hence to raise prices rather sharply. Naturally, if this step were taken too precipitately, or if the normal forces of recovery were further impeded by artificial price restrictions in terms of the new gold content, its aim might be delayed or even defeated altogether.

It was this fear of too precipitate action which probably led to the temporizing policy on the part of the United States government of purchasing gold, first in the domestic and then in the open market. Whatever may have been the constitutional or statutory aspects of having the R.F.C. purchase gold by the sale of its debentures abroad, the policy served to give notice that Mr. Roosevelt did not propose to allow a recession of domestic prices. This came at a time when such a recession threatened, when the N.R.A.'s wage policy had produced a sort of "dead center" for industry, when commodity prices had ceased to respond to the existing depression of the dollar on foreign exchanges, when, indeed, the dollar threatened to rise in terms of all other currencies. The combination of these factors with the prolonged delay in undertaking the program of public works under the latter half of the N.I.R.A. all produced a demand for immediate inflation of widespread proportions. The "gold-purchase" policy served at least the useful purpose of scotching this demand and initiating a new steadyng of prices on the upward curve. It is true that it produced this effect more by the threat of its ultimate potentialities than by any immediate purchasing of gold. But that is as it should have been. Such flight of capital as took place merely eased the dollar down to the level at which stabilization could later be accomplished. It was as painlessly conducted as a major operation of that character could well have been.

In the meantime and at long last, genuine steps were being taken to ease the relief problem where it was most painful. Public works programs were gradually undertaken to the tune of some hundreds of millions before 1933 was ended. But at the same time the hopelessness of getting the larger program (which involved a

possible outlay of over three billions under Title II of the N.I.R.A.) under way in time to prevent widespread suffering led the Administration to inaugurate a Civil Works Act, frankly intended for relief purposes. By supplying federal funds on a large scale (up to \$550,000,000 by May 1, 1934) and under the principle of the grant-in-aid to supplement local funds, the state and local governments were encouraged to transfer men from purely-relief funds to employment thirty to forty hours a week on local improvements. Though inevitably a great part of these funds were spent, from any strictly economic point of view, in waste efforts, the total effect was to inject purchasing power at the most necessary point and to improve public morale out of all recognition. Hopelessness disappeared and men accepted any work as better than none. Added to the Civilian Conservation Corps of about 300,000 which had been recruited for forestry purposes from June onwards, the C.W.A. helped to make good the slowness of the P.W.A. program.

This redistribution of national wealth by a high-wage, reduced-hour program under the N.I.R.A., coupled with the freest possible spending program, and a sort of capital levy by devaluing the dollar's gold content, implied an acceptance of the theories of the Cambridge (British) school of economists. The alteration of the monetary base alone would not produce the right speeding up of consumer power or a proper new level of prices. Only by pumping the money into the hands of those who would accelerate the velocity of its circulation—by taking it away from the saving classes—could the result be reached. Certainly a considerable trial of the Hoover policy of waiting for the storm to lift had produced small evidence that enough water had run off to leave our economic vessel of state floatable on an even keel.

If I may be permitted to ride that well-worn figure of speech a little hard, bankruptcies and receiverships had not pumped the water-logged compartments evenly and there was a heavy list to port, where the cargo of farm and realty mortgages had shifted, with no guarantee that the whole burden of banks and insurance companies might not follow. The devaluation of the dollar, plus a bold public works program and an arrest of falling prices, did tend to lighten the ship. The processing-taxes and limitations of production under the A.A.A. simply involved throwing cargo overboard. Even though the effects of increased costs under the N.I.R.A. might well tend to upset the equilibrium desired between in-

dustrial and agricultural prices, heroic measures had nevertheless to be taken in view of the hopeless conditions of the usual sources of relief—world markets. Temporary relief indeed was granted to our own system by transferring some of our surplus and sodden cargo to the world market through exchange depreciation, as a result of this maneuver. But the relief can at best be only temporary unless a new gold basis can be made to serve as the beginning of a reopening of world trade all around. To tide over the depression, agricultural export crops will have to be jettisoned—or restricted. But that is only short-run relief at best. Only if the pumps can be got to work through generally increased consuming power—and that means raising the level of exchangeable production, not lowering it—can we be refitted for prosperous voyages in the old ship. Otherwise our cruising for trade will have to be done on inland waters, with a vessel of entirely different design and more limited cargo space.

For the moment, in the absence of any apparent change of heart toward raising prices by joint international policies, our national aims have necessarily been somewhat tentative. We were engaged upon a redistribution of wealth, but we stood a considerable chance of losing the support of our capitalist classes for a new recovery program, and even for the borrowing necessary to finance public works and relief. Direct inflation would make sabotage by the capitalist inevitable and would equally work graver hardships on the laborer and the small investor than on the larger capitalist. It might quite possibly get completely out of hand if it destroyed the power of the government to borrow.

The result was that the Administration's policy, shrewdly calculated politically, became quite unintelligible to the economist. Why refuse veterans' relief and cut down the expenses of the state for its "normal budget" and then bet these or larger sums on the pack of cards with initials on them that made up the New Deal? Were not the latter, too, in the words of Alice, "only a pack of cards?" Did not the state pay the bets, no matter how they were shuffled? But not quite. Lenders took pleasure in the virtue of Mr. Louis Douglas. To cut down the number of the "permanent bureaucrats" reconciled them to an increase in those alleged to be "for the emergency only." Lenders also preferred to get interest on loans rather than have the government printing presses take away their claims. Gradually a conviction spread that if the new

sixty-cent dollar could bring back a market for bonds and profitable employment for capital, it would be better than to take the fifty-cent, *or less*, settlement on the dollar that general bankruptcy would mean. True, devaluation worked unevenly. But shrewd investors could protect themselves as well or better in rising markets than in general deflation. There is also a human, that is to say a political as well as an economic, limit to any squeeze game, even through the stock market.

Naturally, the rigors of the Securities Act, with the loopholes it left for future legal blackmail, did not please investors or investment bankers. Much of it—as much as was founded on the English Securities Act and the Companies Act—was sound. The excessive provisions of penalties, however, tended to check any speculative issues and to restrict unduly the flow of private capital into legitimate new issues.

Add to this that bankers were also disturbed by being called on to aid industry by liberal lending at the same time that, in order to qualify for deposit insurance, they were told that they must be able to stand the most rigorous inspection of federal bank examiners, and some of the grounds for opposition to the New Deal by those qualified as “money changers” appear clearly enough. The Glass-Steagall Act, though its principal author originally intended it to guard against the speculative mania of the nation, by amendment grew to include deposit insurance (up to one hundred per cent for small depositors). Under these conditions, lax banking can be handled only by stringent inspection, and probably not adequately by that. The East was by no means happy at having to put its eggs into the same basket with the South and West.

In other ways, too, political control over banking was so extended as to cause the bankers grave misgivings. Abuses that required the divorce of issuing houses from banking, and from holding-company control of both, were generally admitted. But the control of the Federal Reserve system over the investment portfolios of their member banks is all the more unpalatable when the linkage of the Federal Reserve Board to the Treasury becomes more evident. Andrew Jackson’s policies have been imitated and extended to actual control of “the Bank,” rather than mere opposition to it. Not only does the Treasury get the gold profit of devaluation, but also control of the exchange equalization fund of two billion dollars taken out of this sum. The Treasury can, under the

Thomas amendment to the A.A.A., force its securities on the Federal Reserve. And the political control of the Board is in any case assured.

Here, too, however, there are converse aspects. It can hardly be doubted that stabilization at the preliminary gold figure announced (\$35 an ounce) was forced on Mr. Roosevelt, whether he desired it or not, by the government's budgetary deficit for emergency expenditures. He could count on finding (by a capital levy, through taking the profit from devaluation) about three billion dollars for his prospective deficit of some seven to ten billion dollars for the 1934 emergency budget. But he had to borrow the rest—or print it. The banks also could point to the new powers of the Reserve Board for open-market operation granted by the Act, and to the fact that the Reconstruction Finance Corporation, inaugurated by Mr. Hoover to come to their aid, had under his successor enormously extended the range of its beneficent intervention to prevent "freezing" in important individual instances. Its responsible head, Mr. Jesse Jones, wished to extend these operations into direct commercial banking for further control of industry under the N.I.R.A.

Unfortunately, from the banks' point of view, this works both ways. Mr. Jesse Jones controls many times more credit than did Mr. Wiggin at his best (or worst). By buying voting shares in banks to bolster their capital stock, the R.F.C. holds substantial control in a startling number of instances. Its intervention to name the chairman of the board of a Chicago bank showed that this is not an empty power. Further, the R.F.C. is at present almost the only source of new credit on a large scale. If its functions are extended to making loans to small business men, banks will feel a direct competition. So far, they have been glad to have the R.F.C. make the doubtful loans, even to themselves. From now on, they may view this formidable instrument of state capitalism as a gigantic and usurping rival, just as some of the utility companies view the T.V.A.

But the answer to criticisms of the government's credit policies up to this time is that they have supplied credit which was not otherwise forthcoming. If private credit is too prostrate to lift its head, it can hardly reproach the State for intervention. And if private credit has learned nothing, the State will undoubtedly have to continue to act as the controlling organ. But here, as

everywhere else, it seems better to have the State entrust the actual supplying of credit to professional bankers, subject to the State's regulation, inspection, and to a form of control by both Treasury and Central Bank. The prospects of a wiser handling by a federal bureaucracy of the details of credit in a rapidly changing industrial picture do not seem flattering. Though the State must concern itself with general monetary and credit policy, it can hardly carry out the whole of detailed banking administration without bogging down in hopeless red tape and routine. It has a right to lay down normative and regulative legislation for banking and investing, as well as for stock exchanges. It cannot effectively run these things itself, and it must be careful not to make their normal functions impossible. Assistant Secretary John Dickinson's strictures on the Rayburn bill for controlling the stock exchanges seem generally sound.

The ever-present danger of State action in supplying and controlling credit is that private credit will simply atrophy or be wiped out. The only defense of the State's action is that private credit had already ceased to function. The State, if it does not intend to supplant private credit entirely, must therefore restore the requisite confidence in the prospects of profitable employment of capital. Any monetary maneuver requires to be carefully checked to prevent a spurious boom through credit inflation that will not alter the total picture of the nation's economic maladjustments. Nor can state expenditures do more than give a breathing space and new vigor to production. If they are not conducive to readjusting the balance between agriculture and industry, and between the consumption goods industries and capital goods industries, the whole process of economic maladjustment and depression repeats itself, with the State's credit no longer available as a steady-ing factor.

Private business must therefore at all costs be revived. In this respect the N.R.A., though it means a possible stabilizing of production on a lower level for the time being, does seem to have afforded to business a relief from price declines. If wage levels in real wages can be raised in the lower brackets and reduced somewhat where they were out of all economic line, both by means of the operation of the N.I.R.A. minimum wage and by the devaluation of the dollar, business may once more become profitable. But this depends upon not having to force through the drastic

readjustments that economic isolation would involve, with the loss of both foreign loans and foreign markets. The devaluation of the dollar, if its effects are controlled, would put us back on a competitive world level. If recovery can take up the slack in unemployment and relieve the State of the C.W.A. and other drains, the race between capitalist recovery and state-capitalism will be won by the former.

Political statesmanship thus has to remedy the break-down of an economic machinery in which the profit motive proved to be not an all-sufficient dynamic to recovery, certainly not an automatic adjustor of the whole mechanism. The economist, however, can quite legitimately ask the political controller where the latter thinks that the operations will land the economic system. The economist has a sufficient body of past evidence to indicate that if the State wishes to retain a predominantly private-capitalist economy, it must do so by maintaining the conditions of a profit economy. Raising wages and shortening hours can be carried too far. If the State is bent on a reform so radical as the general substitution of state-capitalism throughout industry, it must face the problem of a price policy that will also adjust agriculture to levels of probable consumption. Even in the most radical political solution, the planned economy of a totalitarian state like that of Russia, the consumer also remains a factor in regimenting production to the State pattern.

But the political scientist can claim with some boldness that economic "laws" are fictional limits of about the same character as the concepts of juristic sovereignty and of law, and susceptible of the same corrections. He can correctly assume that traditional economics has not concerned itself with problems like the exhaustion of natural resources, and that the extractive industries (including some types of farming) impose upon the State a definite duty to control production in the interests of the future as well as the present. The New Deal's most interesting efforts have come in this field, not only in the C.C.C. and the A.A.A., but in the codes for lumber and mining industries, particularly coal and petroleum.

Finally, he can claim with justice that political experimentation can within limits alter the conditions on which the economists' assumptions rest. The boldest political assumption of this reformist order is that of the Marxian socialist who would attempt to regenerate humanity from the whole psychology of private profit on

which traditional economics is based. Without attempting so sweeping a transformation, democratic and constitutional governments are trying to furnish the control over the economic mechanism which will limit the speculative swings and unlimited greed of private capitalism. By experiments in directing the volume and the flow of credit, in state-corporations (like the T.V.A.), in regulation of public utilities, in imposing new limits on industrial warfare between capital and labor, the New Deal is conditioning the assumptions of the economist. But unless it is prepared to go much farther toward the ultimate Marxian goal than is now indicated, it cannot safely dismiss the warnings of the economist as to the conditions under which recovery can take place within the capitalist system.

If we do get a steady progress toward business recovery and the restoration of private capital to its necessary rôle, many of the factors of the N.I.R.A. and the A.A.A., and the rest of the pack of New Deal cards which limit production, will naturally and gradually disappear. But a stabilizing control over state-supplied credit and a more organized industrial self-government ought to remain as permanent contributions to our national life.

## A LATTER-DAY TYRANNY IN THE LIGHT OF ARISTOTELIAN PROGNOSIS

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The world as Aristotle and his contemporaries saw it was already a spent world. Its original creativeness had flowered during the sixth and fifth centuries in an outburst of discovery and invention in political and social as well as in literary fields. By the middle of the fourth century, it was the turn of the philosopher to take the results of the discoveries, and synthesize and publicize them in such a way that all the Greek communities should be enabled to work out the combination of forms of society and government best suited to their needs. The study made by Aristotle of the states of his own day maintained its authority across empire and into nationalism, through antiquity and the Middle Ages, up to the threshold of our own modern capitalistic civilization. From that time, however, a new era of inventions seems to have erected an insurmountable barrier between the old and the new, and the relevance of earlier thought for modern problems is called in question.

It must be admitted that "capitalism" and "socialism" are misnomers when applied to the simple economics of an agrarian and trading population of the fifth and fourth centuries before our era. The tenseness of the modern economic struggle invites the adherence not merely of the expert in economic and political theory, but also of the floundering victim to one or another of the rival dogmas such as Communism or Fascism. The parallel struggle is worked out in other terms by ancient historians and philosophers, who share, in spite of their apparent calm, in the passion of their contemporaries. The undisciplined mob of the city state, that ultimate and worst form of democracy, and the self-seeking tyrant, that mixture of the worst features of the inferior political forms, democracy and oligarchy, enact their dramas for political power in terms of constitutions and only subconsciously in terms of economic advantage. The modern reader experiences a sense of remoteness and craves the familiarity of such terms as "diminishing returns," "gold standard," "planned economy," and all those other key words which explain, or purport to explain, the *malaise* of the rheumatic world mechanism of today. Yet if a limited interchange

of terminology is permissible, a transfusion of spirit can be effected, and a new meaning enters the old forms.

Aristotle saw clearly the dangers of the capitalistic, or what he calls the aristocratic, state. In spite of personal bias for this type of state, he was far too hard-headed to reject the facts of the world as he found them empirically. The aspirations of the capitalist class, in which efficiency and wealth are already transmuted into the claims of birth,<sup>1</sup> are submitted to an extremely odd mathematical test. A peculiar kind of equality is Aristotle's requisite for the enduring state. The equality is of two sorts, numerical and proportional. Both kinds are necessary for the ideal polity. The democracy represents the numerical type, in which each individual is the equal of the other in the impact he makes on the organization of the state, a point of view in which Aristotle approaches the socialist basis of society.

The other equality is more difficult to understand. Inherent in it is a measure of inequality. Within the equality of number exists individuals of differentiated capacity. In the model state there might be only one hundred of this class as opposed to many times the number in the other. Here Aristotle shows that he would not have misunderstood the claim of capitalism as against the vast proletariat in the world today. The ideal state is neither the one nor the other exclusively. The claim to rule on the basis of equality of number, one individual counting as one and no more, is accounted unjust, and rightly so thinks Aristotle, by those who are convinced that they possess unequal or special capacities. Yet proportional equality is as unconvincing in its claims as numerical equality. It needs a balance of the two principles in the state to embody what Aristotle regards as social justice. His solution of the fundamental problem is by the old method of the Mean, but it looks strangely like some modern solutions. Here is social and political equality combined with the opportunity for the many to choose as their leaders the men of differentiated capacities. Such is the balanced state, and suitable education is the means of attaining it.

It is necessary to have in mind the outlines of the Aristotelian *politeia*, for which the nearest equivalent is Social Democracy, before turning to the theory of revolution, and in particular the Nazi revolution with the portrait of the *Führer*, in the fifth book of the *Politics*.

<sup>1</sup> *Politics*, 130lb. "Efficiency and wealth in one's ancestors give title to nobility."

There, after a brief review of his principle of the two equalities, Aristotle inquires into the causes of political revolution. The various types of states are surveyed, and the causes of change from one constitution to another are analyzed. Having pointed out the dangers that await each particular form of polity, he proceeds to show the saving means by which each form may maintain itself for the longest possible period. As the book draws to a close, there is to be found a penetrating analysis of the basis of tyranny, which it is the purpose of the present paper to illuminate by such intimations of the Nazi dictatorship as are afforded by Hitler's own story in *Mein Kampf*, by the excellent commentaries of Mowrer, Hoover, and Wickham Steed, and by the daily and weekly actualities of journals and reviews.

## I

"One must first assume that many states have been founded on the principle of proportionate equality, but then have failed to attain it . . . Revolt occurs when one does not obtain the share of power in the state on the particular basis of one's assumption of the proper distribution of power . . . It is useless to dispose the political institutions absolutely in every respect according to one or the other principle of equality . . . None of the polities built on such principles is enduring. The reason for this is that the initial error makes it impossible to avoid disaster in the end . . . For when the men in office begin to display insolence and greed for personal gain there is a new alignment of factions or a revolt against the constitution that offers this opportunity . . ."<sup>2</sup>

The primary cause for the overthrow of government is the deep-seated sense of wrong. One party is receiving an undue proportion of the gains and prestige that should accrue to all. "It is necessary to take precautions against various sections of the community enjoying prosperity singly or by turns, not simultaneously."<sup>3</sup> This upsets the principle of proportionate equality that guarantees security of government, and a change of constitution results.

There are numerous kinds of changes, depending on the type of constitution with which one starts, and on the type which is evolved as a result of the change. Aristotle is naturally not so dogmatic as are some Greek political philosophers who declare that there is an

<sup>2</sup> *Ibid.*, 1301a-1302b.

<sup>3</sup> W. L. Newman, *The Politics of Aristotle*, Vol. I, p. 535.

inevitable course or regular succession of constitutions. When he deals with the causes of change, he includes a wide range of possibilities. Among these, two changes fit particularly the upheavals which took place in Germany in the turbulent year before the final success of Hitler and the National Socialist party.

The Social Democracy which gallantly, though of necessity because of the default of the old régime, took over the burden of defeat in the World War comes as near to being the ideal *politeia* of Aristotle as any constitution that man has actually had a chance to operate. When it fell from the moderate hands of Brüning, and von Papen, with the connivance of von Hindenburg, altered it into the close oligarchy which for a time had the support of industrialists and the Reichswehr, men wondered at the inner weakness which caused it to collapse so suddenly. The cause on the surface was economic, as all who were in the throes of the depression could see. The Social Democrats had failed to find remedies, their party was disorganized, and anarchy was rife as a result. Aristotle has a word to say on disorder in a democracy that breeds contempt for its rule: "And in democracies too, the capitalists, conceiving contempt for disorganization and anarchy, [form a faction and assail the government]."<sup>4</sup>

But the inner cause was more than that. It lay far within at the foundation of the Social Democracy and operated cumulatively to bring about its overthrow. Professor Hoover makes the point that the Social Democrats were not ready to take over the government and that their doing so when they did branded them, though all too unreasonably, with the stigma of the defeat. Their reluctance to assume command is reflected in the imperfect way in which they organized the powers of the new constitution. Their errors in leaving in key positions in the army, in the educational circles, in the courts, the survivors of the old régime crippled their effectiveness in realizing the social democracy and opened the doors for the return of an East Prussian military reactionary to power as the president of a pacifically inclined progressive state. "Polities alter without open revolt . . . because of negligence whenever men unfriendly to the form of government are allowed to slip into the sovereign positions . . . and also because of slight infractions. I mean by that that frequently a significant alteration of the established constitution takes place progressively, but is quite unnoticed,

<sup>4</sup> *Politics*, 1302b.

if a small deviation is overlooked."<sup>5</sup> Professor Hoover's own words are but a commentary on these principles: "It is one of the maxims of the successful conqueror that the old ruling class must be displaced,"<sup>6</sup> and "they [the Social Democrats] apparently failed to realize that the control of the courts is the most fundamental of all powers and that a revolution which does not secure control of the courts is not really a revolution."<sup>7</sup> The ultimate illegal act of the von Papen coup was the utilization of Article 48 of the Weimar constitution to supplant the elected government of Prussia by an appointed commissioner responsible to von Hindenburg and to the cabinet of von Papen. Like the senatus consultum ultimum at Rome, the emergency power necessary to maintain public order and safety was used to overthrow the very constitution which it was designed to protect. The whole course of error of the Social Democracy is summed up in the judgment of Aristotle: "The slip occurs in the beginning, but the beginning is accounted half the whole. The result is that the slip, small in itself, has a disproportionate effect on the other parts of the structure."<sup>8</sup>

Errors such as these may well occur in any form of government, and slight illegalities or disproportions of power have their deleterious effects in any case. Aristotle is not blind to the forces outside of the immediate party in power which overthrow polities. In fact, he points to just such disturbances as the growth of the National Socialist party under Hitler and shows how the immediate result of the agitation is to draw together the frightened capitalists into a protective oligarchy. "Above all, democracies change because of the intemperate conduct of demagogues. They compel the propertied class to combine by malicious prosecutions (a common fear unites even the bitterest enemies), and by inciting the masses in a body."<sup>9</sup> It was natural that the big industrialists as a body were not yet ready to accept Hitler as more than a convenient agitator to rid them of the Social Democracy. The result was that von Papen calmly froze Hitler out of the oligarchy headed by himself and von Schleicher.

But oligarchies are in themselves the most vulnerable of governments. "They are overthrown when they breed another oligarchy in their midst . . . . In times of peace because of mutual suspicion they entrust their safeguard to soldiers and a mediating officer who

<sup>5</sup> *Ibid.*, 1303a.

<sup>6</sup> *Op. cit.*, p. 38.

<sup>7</sup> *Ibid.*, 37.

<sup>8</sup> *Politics*, 1303b.

<sup>9</sup> *Ibid.*, 1304b.

often ends as master of them both.”<sup>10</sup> It soon became evident that there was dissension in the von-Papen-von Schleicher combination. “The industrialists were supporting the candidacy of von Schleicher for the chancellorship, while the Junkers were supporting von Papen. Thus the issue was drawn sharply between the two leading personalities of the *Herren Klub* cabinet and between their supporters.”<sup>11</sup> The arbiter with the soldiers of the Reichswehr on his side was bound to be the master.

## II

“Yet of all constitutions, oligarchy and tyranny are the shortest-lived.”<sup>12</sup> The von Schleicher oligarchy was to prove no exception to the rule of Aristotle. Its almost immediate overthrow, followed by the accession of Hitler to the chancellorship, brings the discussion to the basis of tyranny; for that is the only one of the Aristotelian constitutions that corresponds to the dictatorship of the Nazi leader.

Tyranny and monarchy are equated in the mind of Aristotle, who defines governments by the number of persons exercising the sovereign powers. But whereas both forms assume the sovereignty of an individual, “kingship is based on an aristocratic principle, while tyranny is conflated of the extremest oligarchy and democracy . . . . The tyrant is set up out of the people, that is to say the rank and file, to assail the citizens of position, to the end that the people may not be wronged by them . . . . Practically all of the tyrants have had their rise as demagogues, receiving support because of decrying the citizens of position.”<sup>13</sup> To comment on the significance of demagogery is superfluous. Any one who is acquainted with Mowrer’s moving descriptions of National Socialist meetings can have no doubt of the studied purpose to “brutalize and dominate” the mass of discontents who flocked to the nightly gatherings. If the least shade of doubt remains, let the unbeliever read of “mein rednerisches Talent”<sup>14</sup> which made Hitler the ring-leader at his school, and then remember the formula laid down in the earlier editions of *Mein Kampf*: “The German has not the slightest notion how a people must be misled if adherence of the masses is sought.”<sup>15</sup>

<sup>10</sup> *Ibid.*, 1306a.

<sup>11</sup> Hoover, *op. cit.*, p. 78.

<sup>12</sup> *Politics*, 1315b.

<sup>13</sup> *Ibid.*, 1310b.

<sup>14</sup> Adolf Hitler, *Mein Kampf* (1933), Vol. I, p. 3.

<sup>15</sup> Quoted in Edgar A. Mowrer, *Germany Puts the Clock Back*, p. 257.

"Tyranny," says Aristotle, distinguishing the tyrant from the king, "has no regard for the common-weal save to secure its own private advantage; the aim of tyranny is pleasure (or self-satisfaction), that of kingship true nobility."<sup>16</sup> At this point, Professor Hoover and other generous critics of the National Socialist movement would take issue with Aristotle. They would presumably argue that what appears self-advancement in Hitler is not the end and goal of his endeavor, but simply the means to a greater end, the rebuilding of the greater Germany, the only method of rallying the truest elements of the *Volk*.

Mr. Wickham Steed and Mr. Mowrer think differently. The first, in a penetrating lecture, analyzes the psychological forces at work and concludes that even in the days of his youth in the Austrian capital, Hitler was "a brooding fanatic who only lacked adequate opportunity to communicate his fanaticism to others."<sup>17</sup> The persecution mania was upon him, as it hung over the German people later after the treaty of Versailles, and it is not surprising that one who understood the attitude of mind so well from the early brooding of youth should have utilized the feeling and manipulated the mass at will. The force of an iron will and the capacity for infinite patience were the two great weapons for power forged in this Vienna sojourn. "Because the goddess of Necessity took me in her arm and threatened so many times to break me to bits, the will to withstand grew, and in the end the will remained the victor."<sup>18</sup>

But there is another side to Hitler's growth in this period that cannot be belittled. It is the formation of a Welbild and a Weltanschauung, a philosophy of life, which served as the "granite foundation" of his dealing with the world at this time, and which, once formed, he never found occasion to change. The great life hatred of the Jew,<sup>19</sup> the equally great life enthusiasm for the Aryan German race as bearers of civilization, were then conceived to give

<sup>16</sup> *Politics*, 1311a.

<sup>17</sup> *Hitler, Whence and Whither*, p. 59.

<sup>18</sup> Hitler, *op. cit.*, Vol. I, p. 20.

<sup>19</sup> It is, of course, well known that the Greeks had their racial problem, which was met in different ways. Sparta's exclusion of the helots, coupled with systematic pogroms, is the extreme on one side; Athens' leniency to foreigners, or "barbarians," metics and slaves, coupled with the opportunity for citizenship at least down to Pericles' time, balances on the other side. The prevailing notion of the definite inferiority of barbarian to Greek is echoed in Aristotle's attitude toward natural slavery. It is interesting to note that in the period of the Thirty Tyrants, the tyrants sought the property (and frequently the lives) of the rich Athenian metics.

meaning and direction to his determination to make himself the great leader. But he did not believe that great leaders would of their own qualities come to the attention of mankind. "Sooner would a camel pass through the eye of a needle than a great man be 'discovered' by an election. He who really towers above the normality of the broad cross-section is accustomed to announce himself personally in world-history."<sup>20</sup>

It is important to observe that "the makers of revolutions are viewed by Aristotle with that absence of sentiment which is characteristic of the best Greek writers, as men keen for power, or wealth, or glory."<sup>21</sup> This means that such abstract concepts as the "Völkischer Staat," "Nordic Supremacy," a "Völkische Weltanschauung," whatever their admitted power as rallying ideals, do not in themselves contain the energizing power sufficient to initiate the overthrow of government. Once when the tyrant Peisistratus returned to Athens, he came under the highest auspices, the personal escort of the goddess Athene. The people may have been duped, but historians were aware that the real basis of his power was the support of a body-guard paid by proceeds from the mines. So Hitler may urge: "Indem ich mich des Juden erwehre, kämpfe ich für das Werk des Herrn;"<sup>22</sup> but in the long run it is "*Mein Kampf*," and Jewish contributions are said to have established the position of the *Führer*.

It seems strange that Professor Hoover, who is so perspicacious when dealing with Hitler's foreign policy, should fail to see how completely manufactured is the mass-movement character of National Socialism. He claims that Hitler is not a demagogue but a genius. It is more correct to say that he is a demagogue of genius, for certainly genius need not connote nobility as well as ability. Surely the statement of Dr. Goebbels is significant in this regard: "There is no National Socialism without or against Hitler,"<sup>23</sup> and the judgment passed by Mowrer is much closer to the personal-power basis of tyranny in Aristotle: "This metamorphosis of a deep-lying itch for power into a full-fledged 'philosophy' was also copied from the Russians, the Italians, and the pre-war German Socialists."<sup>24</sup>

But, as Aristotle says, "acts convict."<sup>25</sup> "The safeguard of a

<sup>20</sup> *Ibid.*, p. 96.

<sup>21</sup> Newman, *op. cit.*, Vol. I, p. 526.

<sup>22</sup> *Op. cit.*, p. 70.

<sup>23</sup> Quoted in Mowrer, *op. cit.*, p. 273.

<sup>24</sup> *Ibid.*, p. 274.

<sup>25</sup> *Politics*, 1308a.

kingdom lies in the troops of citizens; that of a tyranny in mercenaries."<sup>26</sup> It is true that the drilled bands of the S.A. and the S.S. are fellow-citizens, but they are not soldiers in the service of the state and are supported, as mercenaries are, by pay, not from the public treasury, but from the proceeds of mass-meetings and contributions for the cause.

"Tyranny," says Aristotle, "clearly has the evils both of democracy and of oligarchy. From oligarchy it derives its principle of making its goal wealth . . . and of distrusting the rank and file. . . . Oppression of common people, banishment, and distribution throughout different parts of the country are common features of oligarchies and tyrannies. From democracy it derives the principle of making war on the citizens of position and destroying them secretly and openly, and exiling them as rivals and hindrances to the sovereign power. For from them are likely to spring conspiracies, since they wish themselves to rule, not to be slaves. This is the reason for the advice given by Periander to Thrasybulus, to lop off the topmost heads."<sup>27</sup>

The application to the dictatorship in Germany is not hard to make. "Many kindly and idealistic people were deceived by . . . Nazi propaganda in Germany, and it was not until the eleventh hour that Hitler's relations with Thyssen, Big Business, and armament manufacturers became publicly known."<sup>28</sup> A little rewording suffices to drive the rest of the analogy home: suppression of the Communist party, banishment (or involuntary exile), and concentration camps established throughout the country—war upon the men of position, the Jews, their secret and open destruction, their removal as rivals of the real Germans and as obstacles to the rule of the Aryan race. "Heads will roll."

According to Aristotle, tyrannies are maintained in two ways quite opposed one to the other. The first is the more common method and the one more familiar to the world of today. The second is the method of kindly treatment in the course of which the tyrant is metamorphosed into the benevolent monarch, retaining of tyranny only the element of force. It is not departing from the truth to say that the dictatorship of Hitler partakes in the main of the more common variety. "To cut off the preëminent; to eliminate those of intelligence, to suppress clubs and education

<sup>26</sup> *Ibid.*, 1311a.

<sup>27</sup> *Ibid.*, 1311a.

<sup>28</sup> *New Statesman and Nation*, Jan., 1934, p. 73.

and everything else of the sort; to be on guard against every activity from which courageous spirit and self-confidence are wont to issue; to allow no leisure or idle gatherings; in fact, to do everything to keep people all as ignorant as possible of one another. For acquaintance increases mutual confidence. To keep the men in the city constantly visible and in attendance at court. For in this way they are least likely to be up to secret mischief, and they become used to humble thinking if they are constantly servile. . . . To let none of the subjects act or talk in secret, but to have spies . . . wherever there are meetings or gatherings.”<sup>29</sup> These are the ordinary maxims of the tyrant in the Greek world which become today arrest, suppression of political parties, censorship, compulsory youth training, parades of the S.A. and S.S., and organized espionage. Even the *Gleichschaltung*—the process by which Nazi sympathizers are insinuated into the councils of employers and employees—is a species of this elaborate system of espionage. The great need of activity led in antiquity to economic ventures and public works, amongst which was the construction of the Pyramids. Today, men are being put back into industry, and a program of public works has been taken over from the von Schleicher ministry. “The tyrant is also a maker of wars to keep his subjects occupied and constantly in need of the *Führer*. ”<sup>30</sup>

Distrust of friends in particular as having the means to effect what all wish leads the tyrant to honor the flatterer and those humble in their manner of approach. “Rival dignity and independent bearing detract from the superiority and autocratic character of tyranny.”<sup>31</sup> Undoubtedly the modern method is more drastic than the ancient, for, as Mowrer states, “a large number of party lieutenants were supposed to be in a condition of permanent financial dependence on their chief.”<sup>32</sup> The importance of this principle is recognized by Hitler. Professor Hoover speaks of his unwillingness “to have any one who is even symbolically his superior in the state.”<sup>33</sup>

### III

The ancient and the modern are closely interwoven in the principles that govern the rise and maintenance of tyrannies. Will the same similarity prevail in their overthrow? Is Aristotle enough of

<sup>29</sup> *Politics*, 1313a,b.

<sup>30</sup> *Ibid.*, 1313b.

<sup>31</sup> *Ibid.*, 1314a.

<sup>32</sup> *Op. cit.*, p. 279.

<sup>33</sup> *Op. cit.*, p. 181.

a prophet to see the quarter from which the force will come? And how soon can the catastrophe be expected?

The hope of relief in Aristotle is not immediate. To be sure, tyranny is one of the short-lived forms. Even so, it has not always died out with the tyrant who himself grasped the power. The successor has usually proved unable to maintain it; but one tyranny, that founded by Orthagoras, lasted over a hundred years.

Two causes in particular, according to Aristotle, compass the overthrow of tyrannies. One is from without. Some government of opposite character may become more powerful. "That such a government will have the will to attack them is clear; for all men, if they can, do what they will."<sup>34</sup> This government of opposite character would be one ruled by the *demos*. Can it be a Socialist or a Communist form? Russia best fulfills the condition. The anticipation of such a contingency may well lie behind the treaty between Germany and Poland.

The other cause is from within. The movement originates with those who participate in the power of tyranny and are moved to revolt by hatred of or contempt for the tyrant. This alternative presented by Aristotle has little chance of being realized in the present régime. It reckons without the Terror. The Greek tyrant, for all his self-seeking, observed certain limits. Today, there are no limits. Aristotle speaks of courage and passion rising as the result of outrage. Today, not only the will is crippled but the passion is beaten out of the hatred. Such a state of affairs was inconceivable to Aristotle and is utterly alien to the Greek world. "The secret of liberty is the courage to resist" are words without meaning to the prisoner in the concentration camp or to his paralyzed relatives. The only conclusion to be drawn is that the alternative of internal revolt is unthinkable. That leaves a foreign war the only way out.

#### IV

It at first seems incredible that such complete parallels should exist between political theory of the fourth century B.C. and the political history of the twentieth. The correspondences are not chance or occasional. One can read almost consecutively in Aristotle's account and match detail to detail. The reader has only himself to turn to the text to add to the similarities stressed in this paper.

<sup>34</sup> *Politics*, 1312b.

It is obvious that Aristotle is not a complete guide to present-day politics. Though he lived in an age of empire-building, he failed or refused to see the political significance of Alexander the Great. Such an individual seemed to him greater than man, a very god as he claimed to be, and not measurable by human standards. The British Empire and the League of Nations are developments which Aristotle could not foresee, and he did not appreciate the federal movement in Greece that was developed under the aegis of Philip of Macedon. These shortcomings in the political sphere are matched in the economic by the limitation of vision imposed by the simple economy of the day. We can, as has been shown, still draw some comparisons with the problems of today, although of course we must admit that the social classes of the Greek state do not adequately represent capital and labor today. Aristotle was unable to predict the possible fall of tyranny, as Professor Hoover has done, from a complete collapse of the economic system.

When all the inadequacies are admitted, there still remains a vast body of analysis of political systems in Aristotle, the importance and utility of which is paramount today. Before the war, it seemed as if the ghost of tyranny had been laid to rest in the Italian city states, and that the emergence of the nation-state precluded anything but some form of democracy or constitutional monarchy in the great nations. We do not feel so sure today. The range of possibilities has widened considerably since nations have begun to look in upon themselves and empires to show tendencies toward dissolution. Revolution and constitutional change are part of the mental climate of the age and cannot be better appreciated and more surely appraised than by a study of the first scientist, who saw them as manifestations of human will having at its disposal the means to power.

## LEGISLATIVE NOTES AND REVIEWS

**Proposals for a Federal Anti-Lynching Law.** A spectacular series of lynchings in Maryland, California, Missouri, and Tennessee last year called nation-wide attention to an alarming increase in mob violence. When Governor Rolph of California openly condoned the San José affair, it was clear that the machinery of the state would not be used effectively to punish the mob. Under such circumstances, it was only natural that besides the wave of denunciation of Governor Rolph there should be a demand for some action by the federal government when the states permit such activities. In response to this agitation, in the first six weeks of the recent session of Congress, nine bills were introduced<sup>1</sup> and were later under consideration by the judiciary committees of the House and Senate.<sup>2</sup>

Such efforts, however, are not novel, but are only part of a series of attempts to have the federal government deal with this problem. The movement for a federal anti-lynching bill received its first active support in the recommendation of President Harrison in December, 1891,<sup>3</sup> that Congress pass a law to protect aliens from mob violence. This was a direct result of the difficulties arising from the outbreak in New Orleans in March of that year, when eleven Italians awaiting trial were taken from the jail and lynched. Louisiana made no effort to apprehend or punish the leaders of the mob. Since three of the victims were Italian citizens, their government protested, under the terms of the treaty of 1871.<sup>4</sup> The United States was forced to reply that it had no authority even to speak in the matter, since under our federal system the states had jurisdiction over such crimes.<sup>5</sup> This failed to satisfy the Italian government, and strained relations ensued, until Secretary Blaine offered compensation to the families of the lynched men.

Following out the President's request, Senator Sherman introduced a resolution instructing the Committee on Foreign Relations to draw up a bill to protect the treaty rights of aliens. Such a bill was submitted, providing that where acts which were crimes under the laws of the states were committed against aliens in violation of their treaty rights, the offenders

<sup>1</sup> H.R. 6157, 6201, 6220, 6470, 6559, 7248, 7395; S. 1978, 2031.

<sup>2</sup> At the date of writing (May, 1934), with the exception of S. 1978, which has been reported by the Committee on Judiciary, the bills are still in the hands of the respective committees.

<sup>3</sup> 23 Cong. Rec., 4549.

<sup>4</sup> Art. 52: "The citizens of each of the high contracting parties shall receive in the states and territories of the other the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives."

<sup>5</sup> Sen. Doc. 17, 55th Cong., 1st Sess. "Indemnities Paid by the United States to Aliens." *Foreign Relations, 1891*, pp. 658-728.

should be prosecuted in the federal courts; but that the statutes of the state should define the crime, prescribe the punishment, and regulate the rules of evidence, procedure, etc.<sup>6</sup>

Senator Gray of Delaware led a powerful attack on the bill,<sup>7</sup> on the grounds that (1) it drew its authority from the treaty-making power, but treaties are subject to the same constitutional limitations as are laws<sup>8</sup> and may not invade the field reserved to the states; (2) in adopting state laws there would be an unconstitutional delegation of the legislative power of the federal government to the states; (3) there would be different punishments for the same crime in each of the forty-four states, according to the variations in state laws, which seemed inequitable; (4) such a law would give aliens an advantage over citizens, in the provision for removal of cases to federal courts; (5) there would grow up a considerable machinery for the enforcement of federal jurisdiction over the large number of aliens, paralleling state jurisdiction over citizens; (6) citizens would be subject to double jeopardy for the same crime; (7) the Constitution contains no specific grant of such power to Congress.

Senators Morgan of Alabama and Hiscock of New York defended the bill on the following grounds: (1) Congress has the constitutional power to pass laws to enforce treaties;<sup>9</sup> (2) the federal government was granted by the Constitution jurisdiction over cases involving aliens; (3) it has been a long established practice for Congress to adopt state laws, even though they vary in specific content; (4) this subjecting of persons to trial by both state and federal sovereignties for the same act has been held not to be double jeopardy; (5) this bill was limited in application to those aliens claiming a right under a treaty; (6) the bringing of these prosecutions in federal courts was not essentially different from the right of federal officers to remove suits brought against them from the state to the federal courts. However, interest in the measure died down and it never came to a vote.

What interest Congress had in the lynching problem for a quarter of a century centered mainly on the protection of aliens in their treaty rights.

<sup>6</sup> 23 Cong. Rec., 4549.

<sup>7</sup> For the debates, see 23 Cong. Rec., 1583, 2682, 4093-4095, 4548-4562, 4599-4608, 4653-4667. See also W. H. Taft *The United States and Peace* (1914), Chap. 3; J. P. Chamberlain, "The Position of the Federal Government of the United States in Regard to Crimes Committed Against the Subjects of a Foreign Nation Within the States, *Proceedings of American Society of International Law* for 1908 and 1910; Charles H. Watson, "The Need of Federal Legislation in Respect to Mob Violence in Cases of Lynching of Aliens," 25 *Yale Law Journal*, 561-581 (1916); and the later discussions of general anti-lynching laws. For the broader question of the power of the United States in regard to treaties, see *Willoughby on the Constitution* (1929) Chaps. 33-36, and pp. 326-334.

<sup>8</sup> Citing *Prevost v. Greenaux*, 19 Howard 1.

<sup>9</sup> Citing *Baldwin v. Franks*, 120 U.S. 678; see also the subsequent case of *Missouri v. Holland*, 252 U.S. 416.

Bills for this purpose were introduced in the Senate in 1893, 1899, and 1908, and in the House in 1900, 1902, 1903, 1905, and 1907;<sup>10</sup> but in spite of frequent presidential recommendations, no action was taken until 1908. In December of that year, the House passed a bill recommended by the Department of State. Its provisions differed from those of the earlier bill by providing that "if two or more persons conspire to injure, oppress, threaten, or intimidate any alien in his free exercise of any right secured to him under any treaty of the United States, or because of his having so exercised the same, they shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."<sup>11</sup> Although less doubt of its constitutionality was expressed than had been the case sixteen years before, the bill passed only by the deciding vote of the Speaker. In the Senate it was referred to the Committee on the Judiciary and there died.<sup>12</sup> The proponents of the bill introduced similar measures in 1909, 1915, 1917, 1919, and 1920,<sup>13</sup> but no action was taken. Finally, the Dyer bill of 1922<sup>14</sup> included a clause for the protection of aliens, adopting the form suggested in 1892; and since then the protection of aliens has usually been combined with general anti-lynching proposals.

Until 1921, similar measures on behalf of American citizens, particularly negroes, had even less success. Referring to the problem of lynching in his annual message for 1892,<sup>15</sup> President Harrison urged, this time in the interests of the colored race, that so far as such acts could be made the subject of federal jurisdiction, the strongest repressive legislation was demanded. But the Congress to which this message was directed took no notice of the President's recommendation. In 1894, petitions for investigation of lynching were sent to both houses of Congress, and a resolution for such an investigation was introduced into the lower house. In 1900, Representative White of North Carolina, a negro, introduced a bill for the protection of all citizens of the United States against lynching; and in the following year Representative Moody, later Associate Justice of the Supreme Court, introduced similar bills. In the same year, 1901, Senator Hoar, on request, proposed such a measure, while expressing doubts of its constitutionality, and later for the Committee on the Judiciary reported

<sup>10</sup> 25 Cong. Rec., 210; 33 Cong. Rec., 377, 638, 1762; 35 Cong. Rec., 638; 37 Cong. Rec., 277; 40 Cong. Rec., 112; 42 Cong. Rec., 308, 6791. See also Sen. Rep. 392, 56th Cong., 1st Sess.

<sup>11</sup> 43 Cong. Rec., 166-175. House Rep. 1056, 60th Cong., 2nd Sess.

<sup>12</sup> 43 Cong. Rec., 254.

<sup>13</sup> 44 Cong. Rec., 58; 52 Cong. Rec., 1998; 54 Cong. Rec., 2726; 55 Cong. Rec., 823; 58 Cong. Rec., 128; 59 Cong. Rec., 1759, 6616. <sup>14</sup> 62 Cong. Rec., 1744. See *infra*.

<sup>15</sup> 24 Cong. Rec., 14. Apparently the first suggestions for a federal law to protect negroes specifically against lynching were presented to Congress in 1892 in the form of petitions from the colored people of Riley county, Kansas, and from the Religious Society of Friends of New York and Vermont. See 23 Cong. Rec., 5272, 5821.

it adversely. Senator Gallinger's resolution in 1902 for an investigation of lynching met the usual fate and was laid on the table.<sup>16</sup>

The subject did not again come before Congress until 1918, when race riots in Washington itself and highly inflamed race feeling in the South and Mid-West brought the problem once more into prominence. In 1918, Representative Leonidas C. Dyer of Missouri introduced a bill to protect citizens of the United States against lynching in default of protection by the states. Similar bills were introduced in the succeeding Congresses by Mr. Dyer, as well as by Representatives Moores, Gahn, Dallinger, and Ansorge.<sup>17</sup> On October 31, 1921, Mr. Dyer reported favorably from the Committee on the Judiciary the so-called Dyer bill (H.R. 13),<sup>18</sup> based on the various bills introduced, and similar in form to that proposed by Moody in 1901. Later proposals, including those now under active consideration, have followed closely the provisions of the Dyer bill. In its final form,<sup>19</sup> the bill (1) defined a "mob or riotous assemblage" as an assemblage of three or more persons acting in concert for the purpose of depriving any person of his life or doing him injury, without authority of law, as a punishment for or to prevent the commission of some actual or supposed public offense; (2) declared that any state or governmental subdivision which failed, neglected, or refused to provide protection for any person within its jurisdiction against such a mob should be deemed to have denied to such person the equal protection of the laws; (3) provided that any state or municipal officer who had the duty or possessed the authority to protect such person and who failed, neglected, or refused to make all reasonable efforts to protect him or to apprehend or prosecute those participating in such a mob, should be guilty of a felony and so punished, as well as such officers who conspired with a mob; (4) provided that those participating in lynchings might be tried in the federal district court according to the laws of the state, on evidence to the court that the officers had failed, neglected, or refused to punish such participants, or that jurors in state courts were strongly opposed to punishing lynchers; (5) made the county in which the person was lynched or (6) in which he was seized liable to forfeit \$10,000, to be recovered by the United States through its courts for the use of the family or dependent parents of the victim of mob action; and (7) incorporated the usual provision regarding the treaty rights of aliens.

Opposition to this bill was vehement, almost entirely among the South-

<sup>16</sup> 26 Cong. Rec., 8182, 8206; 27 Cong. Rec., 15, 477, 946, 1051; 33 Cong. Rec., 1021; 35 Cong. Rec., 51, 212, 248, 248, 5286, 5902-5905, 5956, 6214.

<sup>17</sup> 56 Cong. Rec., 4821, 5362, appendix 337; 58 Cong. Rec., 17, 458; 59 Cong. Rec., 1759, 7188, 7505, 7708, 8029; 61 Cong. Rec., 87, 218, 629; 62 Cong. Rec., 490. House Report 1027, 66th Cong., 2nd Sess.

<sup>18</sup> 61 Cong. Rec., 7063. House Rep. 452, 67th Cong., 1st Sess.

<sup>19</sup> 62 Cong. Rec., 1744.

ern Democrats.<sup>20</sup> In a series of speeches obviously intended for home consumption, they attacked the policy and expediency of the bill.<sup>21</sup> Much more cogent were the attacks on the constitutionality of the measure. Of course, if the federal government is to deal at all with the problem of lynching, it must be in pursuance of some grant of power in the Constitution. This the supporters of the bill attempted to find mainly in certain provisions of the Fourteenth Amendment: "Sec. 1. . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws. Sec. 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." The opponents of the bill declared it to be an unconstitutional invasion of the reserved powers of the states, being an act of the police power. It was pointed out that in a long line of cases construing the Fourteenth Amendment, the Supreme Court has held it to apply only as a prohibition on state action, not on the action of individuals. Therefore the fourth section of the bill was clearly unconstitutional. Further, when sheriffs fail to afford reasonable protection to prisoners, they are usually violating duties imposed by state laws,

<sup>20</sup> For the debates on this measure, see 62 *Cong. Rec.*, 458-468, 541-558, 602-605, 786-807, 895-903, 1008-1033, 1134-1140, 1275-1313, 1338-1381, 1426-1430, 1522-1531, 1548-1551, 1698-1745, 1773-1795, 1797, 6480, 6627, 7158, 8803, 10210, 10224, 10735-10746, 11727, 12743, 13082-13087, 13129, 13269, 13355, 13363-13368, 13370-13372, 13373-13375. For a discussion of the constitutionality of this and similar measures, see House Rep. 452, 67th Cong., 2nd Sess.; Sen. Rep. 837, 67th Cong., 2nd Sess.; *Hearings before the Committee on the Judiciary*, H.R., 66th Cong., 2nd Sess., Serial No. 14, Jan. 29, 1920; *Hearing before the Committee on the Judiciary*, H.R., 67th Cong., 1st Sess., Serial No. 10, Pt. 2, July 20, 1921; *Hearing before a Sub-Committee of the Committee on the Judiciary*, Sen., 69th Cong., 1st Sess., Feb. 16, 1926; *Willoughby on the Constitution* (1929), pp. 1931-1937; Walter White, *Rope and Faggot* (1929), 207-226; Albert E. Pillsbury, "A Brief Inquiry into a Federal Remedy for Lynching," 15 *Harvard Law Review*, 707-713 (1902); L. C. Dyer and George C. Dyer "The Constitutionality of a Federal Anti-Lynching Bill," 13 *St. Louis Law Review*, 186-199 (1928).

<sup>21</sup> The opponents of the bill charged that it was a hypocritical Republican attempt to truckle to the negro vote, that it was partisan and sectional. It was stated that the law would be unenforceable, that it would arouse hostility to federal agents, and that similar state laws had proved ineffective. Further, it was unnecessary, since there were already state laws covering the same offenses and imposing the same duties on officers. It was strongly urged that the lynching problem is local, that Southerners know better than outsiders how to deal with negroes, that the proposed legislation would stir up race feeling, and that other sections of the country should first check their own crime. Further, in weakening the sense of local responsibility, the passage of the law would weaken the power of law-abiding people to check mob violence, and so would aggravate the crime of lynching. The major part of the Southern oratory was based on the supposition that the primary cause of lynchings was chivalrous protection of white women from assaults by negroes; that being so, the way to prevent lynching was to eliminate the crime of rape, and for this law to pass would add to the peril of white women in the South by encouraging negroes through what was in effect a plot to pension the heirs of negro rapists.

and so cannot be considered agents of the state. Hence, even if there is a denial of equal protection, it is not the state which acts. The prohibition of state denial of equal protection is not a grant of power to Congress to assure equal protection; the failure of a state to act to assure equal protection is not such denial; otherwise, the failure to punish any crime would amount to a denial of the equal protection of the laws (which is obviously not the sense of the Fourteenth Amendment). Habitual exclusion of negroes as such from jury lists has been held to amount to a law denying equal protection. But while admitting that equal protection may be denied by unequal, unfair, and discriminatory administration of executive power, Mr. McSwain pointed out that the failure of officers to protect prisoners is exceptional and not habitual. Further, he asserted that the penalty imposed on a county was a tax, and thereby unconstitutional as being laid on a subdivision of a sovereign state.

Those advocating the measure stressed the necessity of federal legislation to punish the crime of lynching, pointing out how rarely any effective action is taken to punish lynchers and urging that some means is necessary of putting the resources of the national government in play to prevent mob violence.<sup>22</sup> On constitutional grounds, however, the supporters of the Dyer bill had more difficulty. They cited some of the same cases interpreting the Fourteenth Amendment to show that a state may deny the equal protection of the laws by administrative and judicial acts as well as by legislation; and that where a state does so, the federal government may pass corrective legislation. In addition, the failure of a state to protect persons within its jurisdiction is tantamount to a denial of protection. The failure of a sheriff to protect persons from mob violence, while a violation of his statutory duties, is still to be considered the act of the state. Also, the penalty on the county is a fine, not a tax, and so is not forbidden by the rule regarding taxation of government instrumentalities. Since the United States may sue a state, it may sue a subdivision of the state and enforce on it the judgments of the federal courts.<sup>23</sup>

<sup>22</sup> Emphasizing the barbarity of lynchings, their frequent injustice, and the degradation of those who take part, the proponents of the bill asked for its passage on humanitarian grounds and as a protection against mob rule and anarchy. While not condoning in any way the crime of rape, they adduced conclusive figures to show that it is not the cause of more than a small percentage of lynchings, and that many negroes are killed for trivial reasons.

<sup>23</sup> There were attempts to show that a mob represents the state when it assumes to function for it in administering "lynch law." There was one claim that the United States has the power of a sovereign government to protect its citizens unless restrained in the Constitution by some express prohibition or some express reservation of power to the states. And Moorfield Storey suggested that the Fifth Amendment should be construed to apply against individual and state action, instead of being simply a limitation on Congress. Obviously, these latter proposals were contrary to all existing constitutional law.

On January 26, 1922, after five weeks of consideration, the bill passed the House of Representatives by a vote of 231 yea, 119 nay.<sup>24</sup> Though the vote was not completely partisan, the opposition was mainly from the Southern Democrats. Furthermore, it was a group of Southern senators who forced the withdrawal of the bill from consideration by the Senate, using filibustering methods which Senator Underwood openly avowed were intended to prevent a vote on it.<sup>25</sup>

Since the failure of the Dyer bill in the Senate, there have been no successful efforts to pass such legislation in either house. With the exception of a committee report in 1924<sup>26</sup> on which no action was taken, measures introduced in 1923, 1925, 1927, 1929, and 1933<sup>27</sup> were merely referred to the Judiciary Committee in the lower house. A measure proposed in the Senate in 1925 was treated similarly.<sup>28</sup>

It remains to be seen whether the present demand for such legislation can overcome the constitutional doubts and the sectional prejudices of Congress sufficiently to permit the enactment of a federal anti-lynching law. If so, we may expect an early attempt to have the Supreme Court decide upon the constitutional issues so sharply raised.

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<sup>24</sup> 62 Cong. Rec., 1795.

<sup>25</sup> 63 Cong. Rec., 288, 297, 332-338, 397-407, 450.

<sup>26</sup> 65 Cong. Rec., 1180, 10538, 11304. House Rep. 71, 68th Cong., 1st Sess.

<sup>27</sup> 65 Cong. Rec., 25, 26; 67 Cong. Rec., 447; 69 Cong. Rec., 92; 71 Cong. Rec., 762; 77 Cong. Rec., 607.

<sup>28</sup> 67 Cong. Rec., 475.

## PUBLIC ADMINISTRATION

**Public Administration in the United States in 1933.** The extent and variety of governmental action in the United States in 1933 invite the observer to search out those developments which are a continuation of the old, those which are novel, and those which may be termed transitional. Hence he becomes the central figure in Mr. Chesterton's game of "Bury the Prophet."

*National Governmental Functions.* The shrinkage of state and local incomes from the yield of the general property taxes and the limited yields from other forms of taxation as the depression deepened left the national government as the most available instrument through which collective action could be taken. Coupled with this fact was the natural tendency to look to a new presidential leadership, with the authority of the large popular majority behind it in the elections of November, 1932, and magnified by the readiness for change which the overturn of a party long in office stimulates as well as reflects. The new Administration was ushered into office with the closing of the banks of the country, and this also made national leadership necessary.

A brief summary of the functions added to those already administered by the national government will be helpful in this attempt to indicate developments in administration. The grant of credit to banks, insurance companies, and other corporations already constituted by the previous Administration through the medium of the Reconstruction Finance Corporation has been more widely extended through the Federal Home Loan Bank Board and its Home Owners Loan Corporation, and the Farm Credit Board (superseding the Federal Farm Board and other agencies hitherto responsible for various forms of agricultural credit); while the Federal Deposit Insurance Corporation administers the new bank deposit insurance program. The policies of appropriating funds for relief to the needy, and of attempting to stimulate industrial revival and provide re-employment, much debated in the previous Administration, were adopted as a central part of the Recovery Program and are responsible for important developments in administration requiring coöperation between the national, state, and local governments. The Federal Emergency Relief Administration and the Federal Emergency Administration of Public Works are the resulting instruments. Another form of attack upon the problem of unemployment (designed for younger unmarried men), by supplying paid service in the Civilian Conservation Corps, was assigned to the Director of Emergency Conservation Work and executed in part through the War Department and the Departments of Labor, Agriculture and the Interior. Supplementing the relief program and the public works

program was the Civil Works Program<sup>1</sup> for employing, more directly, unemployed persons receiving relief, on a great variety of projects, including educational and artistic activities.

While these functions are in a sense a continuation of activities that had previously been initiated, they include considerable changes in emphasis, direction, and application. The granting of credit facilities goes beyond corporate business, industrial, transportation, and banking corporations to the householder and farmer; relief grants are made without "matching"; and a substantial grant is made, in addition to loans, to certain types of local public works. The creation of the Civilian Conservation Corps is a particularly interesting form of employing young men on long-time conservation work in national and state parks and forests (after the fashion urged as a permanent state policy in George Russell's *The National Being*). The recruitment and organization of this large number of men was in itself an impressive administrative achievement concerning which the Chief of Staff has interesting comments in his report for the year 1933.

Three statutes added new functions or formulated new policies relating to functions of a continuing nature. The Securities Act gives to the Federal Trade Commission the enforcement of certain minimum standards of procedure in investment banking. The Wagner Act, a measure vetoed in the previous Administration, and reflecting in its provisions the Employment Service organized in the last year of the World War, creates a United States Employment Service<sup>2</sup> in the Department of Labor, and includes provisions for coöperation with states' services. A third function

<sup>1</sup> Discontinued at the time of writing (April, 1934).

<sup>2</sup> See Beulah Amidon, "The Route Back to Work," *Survey Graphic*, Vol. 23, p. 101 (March, 1934). Under the Wagner bill there is a federal appropriation to be matched by the states, under the administrative supervision of the United States Employment Service, which is authorized to make such rules and regulations as it deems desirable. Among the rules which have been established is the requirement that the standards of employment for manager, assistant manager, interviewers, and assistant interviewers in the state employment offices shall be those established by the national government. Very careful class specifications have been devised in consultation with the Civil Service Commission for these positions. Mr. Oliver Short, employment commissioner of the state of Maryland, has been appointed agent of the United States Employment Service and temporary examiner in the Civil Service Commission in order to act as the field agent in supervising the choice of personnel for the state and local employment agencies. In those states where there is a civil service commission, there will be competitive examinations for these positions. In those states where there is no such commission, Mr. Short has designated a suitable person, usually a member of the state university faculty, to act as the local examining agency. All applications in these states are submitted for inspection, and only those approved by the representative of the United States Employment Service are certified to the governor or other appointing officer. In this way, a high national standard is being set up all over the country, and it is fair to believe that the employment services will be greatly improved.

arising out of the administration of the property of the national government in the Tennessee Valley region is the operation of the hydro-electric system and nitrate plants there entrusted to the Tennessee Valley Authority, with its board of directors, three in number, designated by act "a body corporate." The members of this board serve for a term of nine years. Section 6 of the act expressly forbids the use of any "political test or qualification" in the making of appointments by the board. Section 22 provides for the development of plans for the adequate use and development of the natural resources of the Tennessee River drainage basin.

The two acts which have undoubtedly attracted the greatest public attention are the National Industrial Recovery Act and the Agricultural Adjustment Act. They are presumably temporary, or better, perhaps, may be termed transitional. Behind both is a much longer and more complex history than is apparent from most discussion. For an introduction, at least, to the first, the report of the hearings on the LaFollette economic council bill in 1931 is useful.<sup>3</sup> Most of the problems confronting those administering the present act were there indicated, and some of the trends which led to this legislation described. The analysis presented in the famous paper which Professor Turner read at a conference at the Chicago World's Fair in 1893<sup>4</sup> is a helpful introduction to the second.

The N.I.R.A. gives to economic organizations of a "functional" or "interest" type the opportunity to establish, subject to approval by the National Recovery Administration<sup>5</sup> under an administrator reporting to the President, codes of "fair competition." In the exercise of the wide discretionary powers given to the administration within the principles embodied in the act, several agencies participate. The code authorities themselves have their organization defined within the code for their industry. Within the administration there are advisory councils—the Industrial Advisory Council with a changing membership representing management, the Consumers' Advisory Council, the Labor Advisory Council, and (established early in 1934) a council representing the interests of smaller industrial or business units. In view of the guarantee of the right of organization given to employees in the act, the establishment of a board of arbitration—the National Labor Board, reporting to the President—was natural.

The Agricultural Adjustment Act was assigned for enforcement to an

<sup>3</sup> *Establishment of National Economic Council. Hearings Before a Sub-Committee of the Committee on Manufactures.* U. S. Senate, 72nd Cong., 1st Sess., S. 6215. Government Printing Office, 1932.

<sup>4</sup> "The Significance of the Frontier in American History," reprinted in *The Frontier in American History*, by Frederick J. Turner.

<sup>5</sup> See *The A. B. C. of the N. R. A.*, issued by The Brookings Institution, and the descriptive articles by Schuyler Wallace in *Today*, Jan. 20, 27, Feb. 3, 10, 17, 24, 1934.

administrator, reporting to the Secretary of Agriculture. While the problem immediately confronting the administration is that of dealing with the surplus existing in various agricultural commodities through reduction in planting by the leasing of acreage withheld from production (the leasing to be financed by processing taxes), the fundamental problem is one of the readjustment of the nation to its lands in the light of international developments and the progress in the arts. This raises at once questions of international relations affecting markets and standards of living, the development of domestic commerce and industry, and finally (and most important so far as this branch of administration is concerned) the use to which the lands of the United States are to be put. At this point the problem is very complicated, since there are involved problems of local and state taxation and expenditures and public services, surveys of land, land classification, and finally of land zoning or planning. The problems of enforcing any agreed policy over so vast an area and involving not only millions of individuals, but also organizations, associations, and corporations ranging from international commodity groups to the local coöperative or individual farm, are many and varied. Here the resources of the large number of trained career civil servants in the department, and the hundreds of county agents in the field, are, of course, of great importance. The development of a program in this sector obviously not only involves the national government but is clearly of great importance for the future development of local government. There are important implications, also, in the Subsistence Homesteads program, developed as in part a relief measure, from the point of view of agricultural and land-use planning.

One may note both a continuation of an older function of the national government and a new application in administration in the establishment of the Office of Federal Coöordinator of Transportation, working with and through the various transportation organizations and public authorities dealing with them. The first report of the coöordinator, Mr. Joseph B. Eastman, contains several references to the administrative aspects of various possible transportation programs and refers to the work of co-ordination already under way on a voluntary basis.

The adoption of the Twentieth Amendment brought the return of the older governmental function of regulating instead of prohibiting the liquor industry and trade. The President established an interdepartmental board to formulate a policy, which led to the establishment of the Federal Alcohol Control Administration. Use has been made of the power to regulate by means of codes of fair competition under the National Industrial Recovery Act. Codes were established, for example, for the alcoholic beverage wholesale, the distilled spirits, the distilled spirits rectifying, the wine, and the brewing industries, and the licensing of imports

was also employed. A variety of administrative agencies for regulating sale have been authorized by the states, as well as various methods of apportioning powers between the states and local governments.<sup>6</sup>

*Resulting Problems of Administration.* The listing of the activities mentioned above as representing continuity, novelty, or a transitional policy has been arbitrary. The student of administration, however, naturally seeks for some order and direction in the rush of events such as we are witnessing. What facilities exist for enabling the President to seek some general view of developments? There has been established by executive order an Executive Council, with a secretary, which presumably is designed to serve as such an advisory group in which final administrative policy can be clarified and priorities fixed. The Council, which meets each Tuesday, includes the ranking heads of the recovery agencies, the director of the budget, and the members of the cabinet. The secretary of the Executive Council also serves as secretary of the new National Emergency Council, designed to be the central office of information on all recovery policies.

A number of advisory staff agencies have been established as an aid to the more careful formulation of policy and the preparation of materials upon which the formulation of policy by leaders in the Administration may be based. Among these are the new Central Statistical Board under the chairmanship of W. W. Riefler,<sup>7</sup> and including the chief of the Bureau of Labor Statistics and of Foreign and Domestic Commerce as the assistant director of the Census; and interdepartmental committees on commercial policy, the regulation of exchanges, communications, and the control of alcoholic liquors. A new agency which obviously has great possibilities of influence is the National Planning Board, established by executive order to advise the Public Works Administrator on the allocation of the public works funds by developing a comprehensive plan within which the particular projects may be assigned. This board, consisting of Messrs. Frederic Delano, Wesley C. Mitchell, and Charles E. Merriam, with Charles W. Eliot II as executive officer, has encouraged the formation of state planning boards with which the national board may coöperate in securing coördination in the development of public works programs. The National Planning Board is having prepared studies of the function of planning in the governmental system of the United States, of a continuing program of public works, and of special problems of planning in

<sup>6</sup> State provisions are conveniently summarized in *Bowne's Wine and Spirits*, March 15, 1934. It is understood that the Bureau of Social Hygiene has in preparation for publication later in 1934 a descriptive study of the legislation and administration resulting from prohibition repeal.

<sup>7</sup> Mr. Reifler is also economic advisor to the Executive Council, thus relating the collection and interpretation of current statistical data to the policy-forming authority.

selected regions of the country. In view of the relationship between these projects and the land-use problems confronting the Department of Agriculture, the Reclamation Service of the Department of the Interior, and other governmental agencies, the possible importance of the new National Planning Board as a staff agency advisory to the Administration leaders is evident. The realization of this importance will depend upon its becoming genuinely representative of the planning decisions made as a matter of daily work by the permanent officials in many different agencies of government, and of its discovery and use of planning resources existent in state and local governments.

Changes have taken place in the older staff services. A further centralization of purchasing has been secured through the establishment of the Procurement Division in the Treasury, supplanting various older agencies. Disbursements have also been centralized in the Division of Disbursement in the same department. Both of these measures were taken by executive order of the President following the legislation adopted in 1933.<sup>8</sup> The Bureau of Efficiency has been abolished. The Economy Act provided for cuts in the salaries of the civil service and resulted in reductions in the staff. At the same time, additional employees were recruited for the new recovery agencies which were not placed under the civil service law. A partial offset to these losses is found in the provision referred to above prohibiting employment under the Tennessee Valley Authority for political reasons; while some of the agencies, notably the Agricultural Adjustment Administration, have established personnel staffs under experienced officials. The new positions have been brought within a salary classification program by the Bureau of the Budget, based generally upon the arrangements proposed for the field service in the report made by the Personnel Classification Board before its absorption by the Civil Service Commission.

Some brief appraisal of the kind of administrative problems which are thrust into bolder relief by experience in the national government during the past year may be hazarded. The frequent references in press and speech, not only at home but also abroad, to the term "dictatorship" warrants, perhaps, a comment. Students of administration have been substantially agreed upon the desirability of extending the discretionary power of the executive over the allotment of expenditures and the internal organization of administration. Some gain in this respect was made in the legislation of 1932 and of March 3, 1933, recommended by President Hoover and utilized by President Roosevelt for securing changes in the administrative organization and structure by executive orders, which

<sup>8</sup> See L. F. Schmeckebier *et al.*, "Organization of the Executive Branch of the National Government of the United States," in this REVIEW, Vol. 27, p. 942 (Dec., 1933).

must be submitted to Congress and do not become effective until the expiration of sixty calendar days. The President was also given wider discretionary authority under the Economy Act to effect economies not only in personnel but also in administering laws relating to pensions for ex-soldiers. At the time of writing,<sup>9</sup> this discretionary power has practically been extinguished by a statute passed over the President's veto. The present arrangements obviously fall short of what most observers would deem a desirable control by the executive of expenditures within the maximum fixed in statutes and budget. The discretionary powers granted the Federal Trade Commission under the Securities Act will doubtless obtain greater precision in definition by rulings of the Commission, judicial interpretation, and statutory amendment. This, at least, is the usual experience. The discretionary powers granted under the N.I.R.A. are wide, but an important principle is introduced in the establishment of organizations of those affected by the law and its administration who participate in the translation of the general legislative standards into more precise rules and procedures. We have long been familiar, of course, with the fact that the present nature of governmental functions forces a wide delegation of discretion to the administrative authorities, in order to obtain necessary adjustments of principle to varied time and place factors, and in order to obtain the services of technically trained and widely experienced personnel in their enforcement. There has been some experience, notably in state industrial commissions, with advisory consultative or rule-making boards representing the interests affected by the legislation associated with its enforcement. We now have an extensive use of this principle in the organizations of labor, management, and consumers found in the N.I.R.A. and also in the A.A.A. The older principles of judicial and legislative responsibility and control over administration are now supplemented by that of consultation with the interest groups affected.

The most extensive use of discretionary power is to be seen in those areas—notably currency and the grant of credit or financial aid—in which immediate action by the specialist is required, or where the peculiar circumstances of each project are determining factors within a general legislative authorization. The administration of currency policy is highly centralized and secretive in all states; the grant of credit facilities was initiated under the preceding Administration in the establishment of the Reconstruction Finance Corporation; while the allotment of funds for public works projects was also initiated in part by the preceding Administration, and has been surrounded by the administrator, Mr. Ickes, with a formidable array of checks and investigations. The relative authority of legislative and executive branches, indeed, falls well within the limits established as desirable by the Inter-Parliamentary Union at its 1933

<sup>9</sup> April 2, 1934.

session at Madrid—and indeed leaves something to be desired at many points if we are to secure the best use of the instruments of government.<sup>10</sup> Thus we do not as yet possess an effective continuing congressional committee charged with the duty of acquainting itself with the day-to-day problems of enforcement of the powers delegated by Congress to the Executive with a view to perfecting legislation or to securing a general review of the application of the larger policy to specific cases; nor has Congress relinquished its right to increase appropriations and force expenditures above those deemed desirable by the Executive.

While Congress<sup>11</sup> failed to follow a personnel policy advocated by most students of public administration when it exempted the new agencies from the application of the civil service law, certain partial mitigations have been made as noted above. It should also be recognized that the national government possesses a considerable staff of well trained and experienced civil servants. This fact is too often ignored, both at home and abroad. Furthermore, there are available in American business, law, and the professions generally, and increasingly in the general field of social research in the universities and in numerous organizations, a large number of men and women possessing a knowledge of the problem of the respective fields in which they are working. These have been drawn upon for many of the governmental staffs, along with the party workers. Public interest and discussion has viewed the personnel question in the past year largely in terms of the "Brain Trust," seeing here a new phenomenon. The political scientist and the publicist have failed to make the country aware of the large body of professional civil servants who have for a long time become an increasingly important factor in the government. The average "brain truster," indeed, has been chiefly a staff adviser on policy, rather than a line official.

Also noteworthy has been the contribution of the career men in the army in the work of the Civilian Conservation Corps, and through the Engineering Corps on the public works planning. And we may discern the rise of a kind of auxiliary civil service in the trade associations and consumer, labor, and farm organizations, and in the code authorities.

The entrance of the national government into the administration of relief and of assistance in local public works has made it, as many have observed, "municipal conscious." While the Relief Administration has always acted in the first instance officially through the state, it has on

<sup>10</sup> See *Political Quarterly*, Vol. 5, pp. 114 ff. (January-March, 1934).

<sup>11</sup> The election, in the 1932 landslide, of many new members of limited experience, representing a party out of power for twelve years, creates a problem of education in principles of administration. On the whole, party policy and leadership in all parties on these matters throughout the country is far behind the development of urgent problems. The same may be said of the press.

occasion established its own organization within a state where it was felt that the required standards were not maintained;<sup>13</sup> while necessarily there has been created a close relationship of public works administration with state and local authorities. In both fields, the value of governmental service organizations has again been demonstrated. Through the Clearing House for Public Administration, the American Public Welfare Association, and the American Municipal Association and its constituent state leagues of municipalities, and many other groups of like nature, additional resources in personnel have been made available for expediting the preparation and clearance of projects and the establishment of standards of administration. They have taken up the stresses and strains necessarily resulting from the divergencies in leadership and preparation among the innumerable governmental units of the country. Many sweeping prophecies are being made as to the future relationship of these different units of government, but our present knowledge is much too incomplete to warrant a generalization other than that the new financial relationship between the national government and local governments, coupled with the planning of public works which will be under construction for some time (and including the housing projects), make the existence of a municipal research and information center at Washington a necessity. Meanwhile the possibilities of a new regional unit such as is the basis for the Tennessee Valley Authority, and for the preliminary inquiries of the staffs studying the Mississippi and Missouri river basins, are being explored. A study of the new regional administrative units established by the various departments of the national government has been outlined by a member of the Brookings Institution staff.

Among the activities which have been placed in charge of a public corporation are housing, the Tennessee Valley project, the subsistence homesteads program, the insurance of bank deposits, and home loans. A grant of \$100,000,000 was made by the Public Works Administration to the Federal Emergency Housing Corporation, which was established as a more effective instrument in expediting a housing program, while slum clearance work was authorized for local governments through the Civil Works Administration grants. During the year, eleven states established state housing agencies (New York and Ohio already possessed housing authorities). A National Association of Housing Officials was organized with headquarters in Chicago in association with the Public Administration Clearing House, Mr. Charles Ascher serving as secretary.

Among the more important administrative developments in the national government in 1933 which we will be eager to follow are: the pro-

<sup>13</sup> Standards of accounting, personnel, reporting, and of the amount of relief to be granted have been fixed for the local administration which receives financial grants.

gram of administrative coöperation for the Civilian Conservation Corps, involving the War Department, the Labor Department, the Department of Agriculture, and the Department of the Interior; the application of the principle of a dual budget, one for ordinary or "normal" expenditures, the other for a long-time period (a principle essential for long-time public works planning, as a Massachusetts commission has already suggested);<sup>14</sup> the new national-local relationships in finance, public works, and relief, with minimum standards of administration to be maintained before grants are made; the new national government-economic organization relationships in the establishment of industrial government; the utilization of new regional units; the establishment of an official secretary to a central Executive Council; the extension of the use of public corporations, and the beginnings of a national program in housing; the application of suggestions concerning administrative law, made in the Wickersham reports, to immigration proceedings in the Department of Labor; the administration of the new—and old—powers over currency and gold supplies and credit; and the use of various types of enforcement.<sup>15</sup>

Two studies now being conducted by national research organizations are of particular interest to students of administration. The Social Science Research Council has established a Commission of Inquiry into the Public Service consisting of President L. D. Coffman, of the University of Minnesota, as chairman; Mr. Louis D. Brownlow, Public Administration Clearing House; Mr. Ralph Budd, president of the Chicago, Burlington, and Quincy Railroad; Professor Charles E. Merriam, of the University of Chicago; and Arthur L. Day, of the National Academy of Sciences, with Dr. Luther Gulick, director of the Institute of Public Administration, as director. The Commission is directed to make a broad survey of the conditions of public employment and to suggest recommendations for the guidance of the country in the future. The Brookings Institution is maintaining a current record of the development of the policy and administration of the Recovery agencies.

*State and Local Administration.* One important feature of the 1933 developments in public administration, as will be evident from the above record, is the predominance of the national government both in public interest and in the initiation of policy. For the most part, the states and cities have marked time. Budgets have been cut, not only in public departments, but also in civic agencies, including the bureaus of governmental research. As yet, the depression does not appear to have stimulated any striking new administrative inventions,<sup>16</sup> although state and

<sup>14</sup> Massachusetts Special Commission on the Stabilization of Employment, *Preliminary Report*, December, 1931; *Final Report*, December, 1932.

<sup>15</sup> Note the use of codes under the N.I.R.A. by the Alcohol Control Administration for controlling additions to existing plant facilities.

<sup>16</sup> Experiment in the administration of the control of alcoholic liquors distribution, noted above, might be cited as an exception to this statement.

local governments are challenged to produce leadership in a better use of existing resources if they are to maintain and increase public confidence and support, in view of their serious financial limitations. Reference has already been made to the services rendered by the leagues of municipalities and the American Municipal Association. The International City Managers' Association is rendering a public service in publishing an annual municipal year-book the first number of which, surveying the year 1933, was issued in April. This publication reports on all developments in municipal affairs, and will obviously be a relief to the writer—and reader—of these notes. The most dramatic events in state and local government during the year were probably the defeats of long-established administrations in New York City, Boston, Philadelphia, and Pittsburgh. The organization of the new administrations in these cities falls within the survey of the year 1934, but the presence in the New York City administration of so many public administrators well known to readers of this REVIEW, such as Robert Moses, Joseph McGoldrick, Russell Forbes, William Hodson, A. A. Berle, and others, will invite the special attention of political scientists to developments in that city.

In the field of state government, there was established by Senator Henry Toll a new organization entitled the Council of States, located in the same building adjacent to the University of Chicago as the existing Chicago group of public administration agencies. The major task of the Council will be the development of means of correlating the activities of the states and of bringing the state and federal governments into closer accord. The Council is directed by a board of managers including the presidents of the Governor's Conference, the American Legislators' Association, the National Association of Attorneys-General, the National Association of State Auditors, Comptrollers, and Treasurers, and the Conference of Commissioners on Uniform State Laws; the executive director of the Council; six state legislators; six administrative officials; and six additional state officials—a total of twenty-five. There are also fifteen associate managers, representing national organizations engaged in governmental research and planning.

The reorganization movement, which has occupied considerable space in earlier reviews in this journal, may be dismissed by noting merely the adoption of the Colorado Administrative Code (C.37, *Laws*, 1933) and by a brief reference to a few other developments. Although the Colorado Administrative Code increases the power of the governor in administration, it clearly reflects the reluctance of the legislature to confer full administrative responsibility upon him. The executive department (one among six—executive, finance and taxation, auditing, law, education, and state—each headed by a constitutional officer) is made the agency for subordinating to the governor the budget and efficiency commissioner, the state purchasing agent, the superintendent of public buildings, the

divisions of highways, conservation, agriculture, public welfare, industrial relations, public health, water resources, civil service commission, and certain boards of inspection. But the control of state administration, even in the case of some of the supervisory agencies enumerated, falls to the executive council, consisting of the governor, secretary of state, treasurer, auditor, and attorney-general, the governor acting as chairman. Budget-making, purchasing, administrative control of allocations and expenditures, investigation of duplication of work, and standardization are duties of the Council, not of the governor. More pressing problems of finance, relief, and revenue have pushed aside further efforts to improve the working structure of the state machine, leaving much still to be desired if the states are to play an effective part in dealing with contemporary public problems.

Chapter 4 of the *Acts of 1933* of the state of Indiana grants extensive administrative powers to the governor to transfer all existing agencies of government to eight departments named in the act—executive, state, audit and control, treasury, law, education, public works, and commerce and industry. The governor is named as the sole head of the executive department and a member of each of the boards placed in charge of the other seven departments, the other constitutional elective officers also being members of boards in charge of those departments relating to their constitutional duties. The attorney-general is to be appointive by the governor upon the expiration of the term of office of the present incumbent. The appointments of all present holders of positions in the various departments are terminated, and future appointments are to be made by the governor for four-year terms, although a single deputy for each constitutional elective office is to be named by his chief. By an executive order of April 15, 1934, Governor McNutt assigned the various state administrative organizations and functions to the eight departments.

Reports on surveys of state and local government in Wyoming and Illinois were made by Griffenhagen and Associates. Certain of the findings of the Brookings survey of Iowa government have been applied, and the survey is to be the topic of discussion at a conference at the University of Iowa in the summer of 1934.<sup>17</sup>

Investigations of local government are more widely stimulated by the problem of tax delinquency. The study conducted by the Michigan Commission of Inquiry into County, Township, and School District Government has been completed and a series of valuable reports issued. A study of the Wisconsin system of local government under the direction of Professor Walter R. Sharp is substantially completed and will be published in 1934. The New Hampshire Survey of the Organization and Administration of the State, County, and Town Governments has been published.

<sup>17</sup> See pp. 481-485 below.

The first orthodox county-manager plan became effective on July 1, 1933, in San Mateo county, California. Other county-manager governments adopted in 1933 include Sacramento county, and Albemarle and Henrico counties, Virginia. Some forty other counties are reported to have this form of government under consideration. County home rule amendments approved in Ohio and Texas and enabling legislation adopted in Nebraska point to further developments in 1934. The work of land economists and rural sociologists in formulating the new land use policies and research into the nature of rural life give promise of offering to the political scientist a fresh insight into the problems of local and state government. The studies in this field of Professors Anderson of Minnesota and Lancaster of Nebraska, as well as others in Michigan and elsewhere noted above, indicate that we may discover a way out of the present *impasse* in which most discussion of local government finds itself.

A brief survey of the year leaves one with the impression of much activity and a favorable response by a public eager for it. Politics has become an important and significant part of life to many people—perhaps for the first time in their lives. There have been no changes in fundamental constitutional structure; there have been significant changes in function and relationship, with the positive program of the national government in matters affecting the state and local governments so intimately that the standards of administration and the policies initiated or approved at the center determine much of the effectiveness of government in the remote periphery. A national land policy dictated by the agricultural-industrial balance vitally affects rural local government; a stimulus to equipment industries by a national public works program implements the plans of cities.

Nevertheless we have still with us the struggle to achieve a philosophy of government in which there is an adequate appreciation of the public servant as the necessary instrument of the community in attacking its difficult problems. Those governments or departments, in states or cities, in which capable personnel has been at work for a long time were prepared to undertake the heavy new tasks of government; and a great cost was paid, on the other hand, for unpreparedness elsewhere. Many of the most important policies of the Recovery Program have been jeopardized less by the lack of capable administrators—they have been far more available than popularly supposed—than by the traditional distrust and suspicion of the public which is fostered by many interested groups and their spokesmen in party and press. Thus the problem of those interested in public administration, and in political science generally, is perhaps less one of emphasis on techniques of administration than of making the American people aware of the place of administration if the possibilities of American society are to be realized. We possess the knowledge that

there are techniques available to accomplish valuable results; our administrative resources are more considerable than we permit ourself to realize.<sup>18</sup>

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**The French Public Service and the Economic Crisis.** In spite of the effort to "conserve the past," there were signs by the end of 1932 that the French body politic was undergoing more than passing tension and strain.<sup>1</sup> By that time the impact of economic depression, slow in reaching France, had, in popular parlance, reached "crisis" proportions; and while crisis is a label which Frenchmen are prone to accord promiscuously to each and every change of ministries, it was gradually coming to connote something analogous in seriousness to the monetary disturbances which culminated in the near-collapse of 1925-26. The indications of danger were multiple: a steady decline in industrial output, a marked contraction of trade, a growing unfavorable balance of international payments, rising railway deficits, and a constant shrinkage of public revenues. According to estimates made by the General Confederation of Labor, the winter of 1932-33 saw unemployment reach a figure somewhere between 1,500,000 and 2,000,000, although the official relief "registers" have at no time shown more than 350,000 to be totally without work.<sup>2</sup> Despite attempts of the police to prevent popular demonstrations of discontent, swarms of "hunger-marchers" poured into Paris and other large cities. A series of strikes broke out in the textile and mining industries of the North. Accumulating wheat and cattle surpluses were so depressing to agriculture that farm laborers were reported to be receiving one cent an hour in certain sections of the country. And that ominous phenomenon—so familiar to America since 1930—of mass protests against high taxes by organized groups of tax-payers, appeared in all parts of the nation. So foreboding had this situation become by the summer of 1933 that certain newspapers were endeavoring to impress the public with the fact that, although Parliament had the right to refuse to vote taxes, citizens could not refuse to pay them.

<sup>18</sup> See, for example, T. S. Harding, *T.N.T.* (New York, 1934).

<sup>19</sup> Dr. White had collected much material for and had partially drafted this review when his appointment to the United States Civil Service Commission prevented him from completing it. Professor Gaus, of the University of Wisconsin, who spent the past year as visiting professor at the University of Chicago, took over the task and carried it to completion. *Man. Ed.*

<sup>1</sup> Cf. P. Brossalette, "France Conserves the Past," *Recovery* (London), Aug. 25, 1933.

<sup>2</sup> In France the majority of industrial workers of peasant origin, upon losing their jobs, rejoin their rural family households and are sustained by the land.

During the autumn and winter, economic conditions grew steadily worse. Public confidence in the government's financial stability was so shaken that the market for further government borrowing seemed to be closing up, the value of outstanding public securities declining at an alarming rate. A new wave of gold hoarding set in, and between October, 1933, and April of this year a foreign exodus of 8 billion francs in gold took place. Notwithstanding the possession of an ample gold reserve amounting to 80 billion francs, together with only a moderate internal public debt of 230 billions (moderate, for example, in comparison with the British debt), and only negligible external obligations (disregarding the inter-Allied debts), French national psychology began once more to be haunted by the nightmare of inflation. Surrounded by a world largely off gold, France was struggling desperately to cling to gold. In such a situation, it took only a financial scandal of relatively small proportions—the Stavisky affair—to convince the heterogeneous groups, Right and Left, opposed to the existing parliamentary régime, that the time was unusually propitious for a *coup d'état*.

After the general elections of May, 1932, which returned the Left Cartel to power, the French political scene had been one of confusion, instability, and weak leadership. Five Radical-Socialist governments, headed successively by Herriot, Paul-Boncour, Daladier, Sarraut, and Chautemps, had struggled to balance the national budget by a series of makeshift measures which somehow had to satisfy, on the one hand, the industrial interests, petty shopkeepers, and peasants, who wanted no new taxes and insisted upon cutting the public pay-roll, and on the other, the organized industrial and governmental employees, represented in Parliament mainly by the Socialists, who vehemently demanded that public social services and salary scales be left intact, and insisted that the mounting deficits be met by curtailing military expenditures, imposing additional taxes, and eliminating fiscal evasion and fraud from the administration of the taxes on personal incomes and on foreign and domestic securities. Three times the government fell because Léon Blum and his Socialist group refused to support proposals to reduce the basic compensation of the army of state employees, even if only by what we in America would nowadays consider insignificant amounts. Meanwhile, as 1933 wore on, the conservative forces of the Right, ably led by M. Tardieu, launched a vigorous attack upon the alleged vices of French parliamentarism and set in motion a current of quasi-fascist opinion to which an increasing proportion of the younger generation appeared to have been attracted. In a series of dynamic articles in his nationalist paper *La Liberté*, as well as in *L'Illustration*, Tardieu was campaigning for a complete reform of the executive and legislative branches of the government. There must be a government with sustained authority "to balance the budget, safeguard the franc, and

deal with the menace of Hitlerism." This would be possible, contended the former premier, only (1) if the civil service unions were put in their "proper place" by statutory injunction and recalcitrant *fonctionnaires* dismissed, and (2) if the cabinet was given the right to appeal over the head of Parliament by dissolution and a national referendum.

While such criticisms as these had often been heard in the political arena of the Third Republic, they had seldom before attained such wide currency in peace-time. Even outside royalist circles, the intelligentsia was finding it fashionable to sneer at the parliamentary régime. "Blue shirted" fascist organizations, although numerically small, were assuming a bolder and more vociferous attitude. Still more significant in certain respects was a schism in the ranks of the Socialist party. More than thirty of its younger deputies, calling themselves "Neo-Socialists," broke away from the "orthodox" leadership of Léon Blum and sought to win supporters for a new party wedded to the triple principles of "Order, Authority, and Nation." Pointing their appeal to the bourgeoisie, these renegades to the true Socialist faith dared to invoke the example of Fascist Italy, even of Nazi Germany, as evidence that the middle classes could be more revolutionary than the proletariat.

Aided by growing discontent, the forces of anti-parliamentarism were quick to take advantage of the opening presented by the Stavisky municipal pawnshop swindle to discredit the Government. Whether there was an organized plot to stage a revolution is open to question, but it is generally admitted that, on the night of February 6, when government troops turned machine-guns upon a seething crowd in the Place de la Concorde, and casualties involving 17 dead and over 600 wounded resulted before dawn came, the foundations of the Third Republic were as rudely shaken as at any time since its establishment sixty years ago. As has happened in past national crises, however, political dissension within republican ranks ceased at the brink of the precipice, and on February 9 a "National Union" cabinet emerged under the quiet but reassuring leadership of ex-President Doumergue. Despite further spasmodic rioting by Communist and Fascist groups, sufficient calm was restored to allow the Doumergue government to win from Parliament extraordinary powers to balance the budget and effect wide administrative reforms by executive decree. After setting up a series of commissions to investigate the Stavisky affair, as well as to recommend constitutional changes with a view to strengthening the parliamentary system, Parliament adjourned on March 16 for two months, leaving France under a quasi-dictatorial executive for the second time since the war.

The effects of this turbulent swirl of political and economic forces upon public service have been two-fold: (1) direct retrenchment in pay-roll and size of staff, and (2) inauguration of plans for comprehensive administra-

tive and fiscal reform. The procedures employed in budgetary contraction call first for consideration.

During the prosperous interlude between the monetary crisis of 1925-26 and the advent of the present depression, French public expenditures had markedly expanded. The ordinary budget of the central government increased from 37 to 50 billion francs, or by nearly one-third. This increase of 13 billion was distributed 46 per cent to national defense, 9 per cent to public debt, 18 per cent to social services and public works, 12 per cent to "political" services, including justice and police, and 15 per cent to civil personnel. In the total ordinary budget for 1932, public debt (including outlays for pensions) absorbed 45 per cent of the total appropriations; national defense, 23 per cent; social services and public works, 9 per cent; the "political" services, 9 per cent; and the compensation of civil personnel, 14 per cent. If the various special budgets, covering the P.T.T. and other state industrial enterprises, be added to the ordinary budget, the aggregate expenditure totals 60 billion francs, of which only 16 per cent was applied toward the payment of the civil service. With debt charges eliminated, salaries and allowances for personal service accounted for roughly a third of the operating costs of the central government. State revenue from taxation equalled about a quarter of the national income in 1932. Including local taxes, the tax burden had reached almost a third of the annual income of the country.

During the history of the Third Republic, unbalanced national budgets have been rather the rule than the exception: 37 fiscal years have closed with deficits and only 26 with surpluses. The French Treasury is always too optimistic in its revenue estimates. Consequently, when the budgets for 1931 and 1932 produced deficits of six to seven per cent, public opinion evinced comparatively little concern. But when it appeared that the 1933 budget, as originally voted, would yield, because of sharply shrinking tax yields, a deficit of 14 billion francs, or 29 per cent, it became generally recognized that some retrenchment was inevitable if a taxpayers' revolt was to be averted, or, it should be added, if further devaluation of the franc was to be prevented.

As already indicated, the principal questions confronting the Government and Parliament were (1) what the relation between retrenchment in expenditure and increased taxation should be, and (2) how the retrenchment, once the amount was determined, should be apportioned among the major items in the budget. Only the extreme Left favored slashing the military establishment. Hitlerism and the appearance of a growing German military budget meant that no French cabinet could remain in power for a moment if it proposed a cut of more than 25 per cent in the military estimates. Substantial savings, therefore, had to be sought elsewhere. A large-scale conversion of government bonds was successfully

undertaken and over 2 billion francs saved in that manner. After much delay and with great difficulty, the Radical Socialist leaders managed to persuade their followers to accept supplementary and increased taxes to the extent of 3 billions, notwithstanding ominous warnings from the Right and vociferous protests from the peasants and shopkeepers, who have for years been the "spoiled children" of the French fiscal system. Into the successive budget-balancing measures enacted after July, 1932, were also inserted provisions designed to tighten up income tax administration. From these various operations it was estimated that the deficit would be reduced from 14 to around 6 billions. For the remainder the Government had to issue new loans, resort to direct administrative economies, or utilize both of these expedients concurrently.

Whatever might have been the economic wisdom of drawing upon the then solid credit of the French state for the entire sum needed to maintain intact the public services, it proved politically impossible to follow any such policy. The popular demand for curtailment of expenditures swelled to such tremendous volume that the liberal cabinets of Herriot and his successors were forced to prepare economies. At the outset, attempts were made to secure administrative contraction without touching the public pay-roll. To this end, a five per cent cut in all departmental appropriations was adopted in July, 1932, with the understanding that the cut was to be absorbed by economies in the purchase and use of supplies and equipment, by leaving vacancies unfilled, by retarding promotions and expediting retirement, and by introducing more efficient office procedures. However, with revenue constantly falling below each revised set of estimates, this measure proved insufficient. Consequently, a decree issued in October set up a General Economy Commission, interdepartmental in character, and ordered each department and independent service to create a tripartite committee whose function it should be to prepare a more comprehensive scheme of economies.<sup>3</sup> The General Commission was given full power to conduct such investigations as it deemed necessary and to coördinate the work of the departmental committees. The composition of the latter bodies was to be drawn from three sources: (1) high officials selected by the head of the department concerned, (2) representatives chosen by and from the subordinate staffs of the department, and (3) representatives of outside citizen groups with special interest in the functions performed by the department. Accordingly, to illustrate concretely this procedure, on the committee for the postal, telegraph, and telephone administration there were representatives of newspaper publishers' associations, the railways, and associations of telephone subscribers; while the various committees set up by the Ministry of Education included representation from a wide variety of such interest groups.

<sup>3</sup> Decree of Oct. 22, 1932.

as university alumni, student associations, scientific societies, and parent-teacher organizations.

Admittedly a procedure carefully devised to insure that the voice of all the principal interests involved should be heard, its practical operation, entailing numerous hearings and conferences, proved too slow and cumbersome to yield immediate results. In the meantime, budgetary resources continued to dwindle. Responding to the widespread demand that governmental staffs be reduced in number, the Paul-Boncour ministry ordered the suspension of all recruitment for the national civil service for the year 1933, with the proviso, however, that exceptions might be made to the order with the approval of the minister concerned and the Treasury, or, in case of posts reserved for disabled veterans, with the authorization of the Minister of Pensions. While from a financial point of view this action was not expected to produce much—for the closed system of promotion prevalent in the French service makes annual turnover extremely low—it was a gesture calculated to appease the "economy-mongers." Although the order was not unfavorably received by the conservative press as a timid step in the right direction, university circles were soon protesting bitterly that the action meant professional unemployment for thousands of students. Not only would there be no openings in the teaching field, but engineering and other technical careers provided in France by public employment would be closed to the youth of the country. Forced to make concessions, the Government reopened an increasing number of competitions as the year advanced, and by November inserted in its new budget bill the provision that recruitment during 1934 should be permitted to fill one-half the number of vacancies which materialized, the creation of new positions, however, being strictly prohibited.

Another step taken to realize immediate economy was a horizontal 10 per cent reduction in state subsidies to local public authorities and private agricultural and industrial enterprises. In recent years, the number and extent of these grants have multiplied at a rapid rate. While part of the subventions has been allotted to encourage public health and social welfare activities, where local resources appeared inadequate, much of the money has been given without proper control over its use and has allegedly served as an incentive to careless expenditure. Whether the latter charge can be substantiated, there is no reliable means of knowing without a first-hand study of the whole question, which no one in France has yet undertaken. There is little doubt, however, that the state has been led to grant rather lavish aid to such quasi-private enterprises as aviation companies, maritime navigation concerns, groups interested in developing silk culture, and the paper pulp industry.

In passing, it should be made clear that this 10 per cent cut did not apply to the program of public works begun in 1931 under M. Tardieu

as a long-time national economic development, and continued more specifically as a means of combatting the economic depression by recent Left Cartel governments. This program embraces plans for electrifying rural districts, for the construction of school-buildings, hospitals, and highways, and for the improvement of port and canal facilities. Nor were state funds for the direct relief of unemployment subjected to the cut. Relief in France has not as yet become a serious burden upon the public treasuries. Such funds as are necessary to supplement private charity are provided in the form of unemployment benefits at the rate of 7 francs a day, plus family allowances, the money being furnished partly by the central government and partly by the territorial departments and municipalities.

Apart from and in addition to the retrenchment measures already enumerated, there remained the most explosive issue of all: Should government salary, wage, and pension scales be reduced, and if so, to what extent and by what method? Knowing that whatever proposal for salary reduction it might advance would meet a united front of militant opposition from the organized civil servants, the Herriot government delayed as long as it dared an open battle over the question. If Herriot had not fallen in December, 1932, on the American war-debt question, the chances are that he would have been defeated on the 2 to 10 per cent graduated pay cut incorporated in his year-end budget-balancing bill. A month later, such was the fate of the Paul-Boncour cabinet, which, deserted by the Socialists, saw its majority shattered. By that time the *syndicats des fonctionnaires* had revived their *cartel des services publics*, an effective propagandist device for facilitating solidarity with organized labor, and were carrying on a country-wide campaign to arouse popular support in their behalf. Although admitting that the cost of living had fallen slightly, the syndicalist leaders contended (1) that compensation schedules in the French public service were still considerably lower than those prevailing in Great Britain, Germany, Holland, Switzerland, and most other European countries; (2) that it was economically unsound to reduce the purchasing power of a million public employees and their families; (3) that thousands of the *rentier* class were deliberately practicing tax evasion and should be forced to declare their full incomes; and (4) that if public salaries and wages were cut, the civil servants would be forced to go through another long, up-hill fight for salary readjustment similar to the ten-year struggle they had been obliged to wage, on account of post-war inflation, to restore pay scales to their pre-war values.

Speaking broadly, anyone who has analyzed at close range the salary policy of the French state would agree that these arguments, though presented with exaggerated emphasis, are well-founded. It is not surprising that the middle and lower grades of the clerical, postal, revenue, and

instructional staffs should persistently fight all attempts to deprive them of the substantial improvement in material status which they have been able to secure since 1927. The triple effect of a revaluation of base pay in terms of 1913 real values, of appreciable increases in family and cost-of-living bonuses, and of a more favorable employment classification had made it possible for their families to enjoy some, at least, of the simple comforts and pleasures to which French middle-class life is attached. Furthermore, if the situation of the superior grades is carefully examined, one discovers that certain categories were still in 1932 receiving basic salaries lower in purchasing power than their compensation of twenty years earlier.<sup>4</sup> Exclusive of small bonuses and allowances, the salary schedules for year-round, full-time employees of the French central government range from 9,000 to 125,000 francs—in dollars at par, from \$360 to \$5,000. Of 500,000 civil employees, as many as 200,000 are paid less than \$500 a year, while only 65,000 receive over \$800, and less than 200 get \$4,000 or more.

In February, 1933, the case of the staff associations for the preservation of existing rates of remuneration was carried to the point of threatening a general strike if Parliament should accept the pay-cut proposals of the Daladier government. But popular demonstrations against the "favored" *fonctionnaires* gained in momentum.<sup>5</sup> The conservative Paris press, largely controlled by the *Comité des Forges*, raised the cry that their ingratitude and treasonable threats must be punished. Ten thousand members of the National Federation of Tax-payers tried to storm the Chamber of Deputies, the police and Republican guards repulsing the effort only after a number of severe street skirmishes. Finally, when it appeared certain that the pay cut would go through, the infuriated civil servant cartel ordered a nation-wide protest strike. For periods of ten minutes to an hour, postal clerks, telegraph employees, customs and revenue officials, public transport workers, and elementary school teachers stopped work. At fixed intervals, telephone operators interrupted service by deliberately giving wrong numbers. Nowhere was there violence or disorder, and the strike was carried through with surprising solidarity and discipline. Among the larger employee groups, only the instructional staffs of the secondary schools took occasion to affirm their loyalty to the Government.

Notwithstanding this impressive demonstration of staff resistance, their Socialist allies in Parliament refrained from taking the responsibility of causing the fall of another Government, and the Daladier fiscal proposals

<sup>4</sup> Although the provision, since the war, of various and sundry special allowances, bonuses, and perquisites brings the total compensation up to a level slightly better than in 1913.

<sup>5</sup> One tax-payer group went so far as to advocate that civil servants be denied the right to vote.

managed to survive. The outcome of the long controversy was, however, heralded by the staff associations at the time as a moral victory. Not only had their cogent and repeated intervention with the Government resulted in an extremely moderate scale of cuts, but in the words of the finance act the cuts were denominated "emergency contributions" and limited to the period from March 1 to December 31, 1933.

In contrast with the rule-of-thumb methods resorted to by many American jurisdictions in fitting pay-rolls to depression budgets, the French procedure was uniformly and systematically based upon the principle of "equality of sacrifice." On all basic salaries, including those of ministers and members of Parliament, a progressive waiver was imposed, beginning at 2 per cent for the bracket 12,000–20,000 francs and increasing by increments of 1 per cent to a maximum of 8 per cent at 100,000 francs and above. A further exemption of 3,000 francs was allowed for a wife, if not employed in the public service, as well as for each minor child. A similar scale of reductions in retirement annuities was imposed.

In addition to the waivers on base pay, a revision of the scale of special allowances and bonuses, to be worked out by the General Economy Commission, was ordered by Parliament. If this revision could not be completed within three months, a flat cut of 10 per cent was to be levied. Near the end of the year 1933, this time proviso was removed and the Commission instructed to proceed with the complicated task of simplifying and revising these indemnities. The Commission, on which sat representatives of the employee associations, had made substantial progress by the beginning of 1934.

In October, 1933, when the Daladier government's financial program for the present year was submitted to the Chambers, the pay-cut issue flared up again. The proposal to continue salary waivers for another year caused Daladier's defeat late that month and proved the nemesis of the short-lived Sarraut cabinet a month later. Although the Radical-Socialists were deserted by their Socialist allies, the latter refused to take upon themselves the onus of overthrowing the fifth (Chautemps) ministry to hold office since the parliamentary elections of two years ago. The "orthodox" Socialist deputies announced that although they could not vote for the new pay-cut proposals without violating party pledges, they would withdraw from the Chamber. Consequently, on December 23, the Chautemps government contrived to put through a financial program calling for an extension of the existing scale of salary waivers for another year, but promising that in proportion as other economies were realized by the abolition of staff posts made unnecessary by administrative reorganization, the waivers would be reduced in amount. Continued with full powers by this legislation, the General Economy Commission was instructed to prepare a *plan d'ensemble* not later than the end of 1934.

These plans, however, were upset by a further decline in tax yields which produced a new budgetary deficit of 4 billion francs by February. How to re-balance the budget and restore financial confidence was the most urgent problem with which M. Doumergue had to grapple upon his advent to the premiership. With the support of a cabinet in which the Radical-Socialists constituted a minority, and in the face of a nationwide "anti-fascist" strike of twenty-four hours successfully staged on February 12 by organized industrial workers and government employees, a series of decree-laws was promulgated which swept away the deficit, largely at the expense of civil servants and pensioned war veterans. By April 14 it was officially announced that budgetary equilibrium had once more been established.

The Doumergue decrees greatly broadened the scope of administrative retrenchment. Not only was the scale of salary waivers increased to 10 per cent on annual pay increments superior to 100,000 francs, but the entire corps of state employees was brought within the scope of the system, a deduction of 5 per cent applying to salaries of 20,000 francs and under. By this action, 465,000 low-paid employees who had hitherto escaped with no pay cut at all were at last caught in the tide of deflationary public finance. To soften the blow, as it were, the waiver on salaries of cabinet members was raised to a flat 15 per cent, with the President of the Republic contributing as much as 20 per cent. Supplementary allowances were correspondingly reduced, and except in specified instances, the holding of jobs from central and local authorities simultaneously was no longer to be authorized.

A still more drastic provision ordered the immediate reduction of staff personnel (military as well as civil) by 10 per cent of the total number. In order to effect this contraction, involving the elimination of approximately 85,000 employees from the state's pay-roll, an elaborate scheme for determining priority of retirement was devised. Except in cases of heavy family responsibility or indispensability to the service, all those employees already entitled to retirement with full pension rights were to be dropped at once. Next in order, employees not over two years from the minimum retirement age were to be removed and accorded the full pension to which they would have been entitled at the completion of the prescribed period of service. If necessary, the retirement of employees with five years still to go might also be accelerated, the pension in no case to fall below what had actually been earned at the time of separation from the service.

In addition to ordering these economies, the Government issued another set of decrees increasing the pension age for veterans by five years and generally cutting the scale of their pensions by 10 per cent. In the future, veterans less than 10 per cent disabled were to receive no pension, while remarried widows were to lose their pension rights. State subsidies

to the railways were also to be reduced, unemployment relief was to be reorganized, and a more economical administration of social insurance was to be instituted.

For the leisurely method of administrative reorganization based upon extensive investigations by commissions of inquiry, the Doumergue decrees proposed to stimulate immediate action by peremptorily slicing 10 per cent from departmental appropriations for the present fiscal year. As the new finance minister, M. Germain-Martin, explained the Government's purpose, it was to compel each administrative department here and now to abolish useless offices, simplify its methods of operation, and increase efficiency, without waiting for the emergence of a "comprehensive *plan d'ensemble*" from the Economy Commission set up six months earlier.

Only passing reference may here be made to the way in which the economic crisis has affected administration in French local government. On account of the dominance of the central state in a unitary system like that of France, local authorities tend to follow the lead of the central government in matters of staff policy. While municipal and provincial budgets have suffered from the shrinkage of revenues, the crisis has been less severe with them than with the national budget. In general, local units have trimmed expenditures by slowing down recruitment, suspending promotions and salary increases, somewhat speeding up the retirement of employees, and reducing by from 5 to 15 per cent staff allowances, bonuses, and pensions. By these procedures, for example, the cities of Paris and Lyons have effected a slight contraction in the number of their employees and the size of the municipal pay-roll. Some municipalities, however, have actually expanded their staffs as a result of local public works programs. For the same reasons which, until February of this year, operated in the case of the national government, there has been no wholesale dismissal of personnel or slashing of compensation standards. Some of the *départements* have cut salaries by a system of moderate waivers, but in practically no case have they in this respect gone appreciably further than the central authorities. However, a 20 per cent reduction in the state's contribution to the pay of prefectoral staffs, effected by the recent Doumergue emergency decrees, is likely to provoke a more marked retrenchment policy on the part of the *départements* and communes than had been the case up to that time.

Notwithstanding the emergency drive behind the Doumergue reform measures, no one who has studied at close range the sterile attempts at administrative reform in France since the war will be inclined to take the latest effort at its full face value. Unless the coöperation of the powerful staff associations can be enlisted, it will be difficult for any *democratic* government, "National Union" or otherwise, to carry through a sustained

program of administrative and fiscal reorganization. After 1928, the pressure of vested interests upon a succession of weak cabinets caused the latter to capitulate before "deputantism" and rescind most of the Poincaré reforms of two years earlier. In the present instance, moreover, the forces of retrenchment will have to reckon with a strengthened and solidified "trade-union" movement among government employees and school teachers whose psychology is likely to become increasingly obstructionist should the French economic situation grow worse.

If that should happen, it is not unlikely that the clamor from the Right for an "authoritarian" government will break forth with renewed vigor. The chances that this clamor might culminate in some form of Fascism for France depends upon the imponderables in European and world politics. Unless economic collapse should become imminent or war descend upon France, the parliamentary régime will probably survive, though its survival may be at the price of continued inefficiency in public administration. If Fascism should succeed a war or an economic breakdown, it would certainly be at the price of cultural liberty, which is above all else prized by Frenchmen. To curb the excesses of French parliamentarism by orderly constitutional change will not be easy. Except in time of extreme national crisis, the French like to live under a weak governmental system. The unfortunate paradox of the situation arises from the fact that those leaders who, like Tardieu and Marin, are agitating for a stronger and more stable executive, express continued hostility to the corporative movement among the civil servants. Under skilful guidance, this force affords the most promising means of securing that economical, simplified, coöordinated, and deconcentrated administration which the politics of the Third Republic has not yet been able to evolve. Each people has its own scheme of values. If a guess be hazarded, it would be that Jacques Bonhomme will travel slowly, albeit jerkily, along well-worn paths of social change unless he is forced to do otherwise by a world travelling too hard and fast along new ones. At all events, the *bureaucratic* mode of life, so thoroughly congenial to French national psychology, bids fair to perpetuate itself in some form or other.

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**German Bureaucracy in Transition.** Among the institutional elements of civic cohesion, the civil service—national, state, and local—has stood out for generations as one of the most influential forces in German life. Though never the actual "governor of Germany,"<sup>1</sup> it was universally rec-

<sup>1</sup> Herman Finer, *The Theory and Practice of Modern Government* (London, 1932), Vol. II, p. 1499. See also my review of this book: 94 *Zeitschrift für die Gesamte Staatswissenschaft*, 301–307 (1933).

ognized as *the* instrument of government. Its devotion and efficiency were not only highly regarded by the community, but also looked upon by foreign observers<sup>2</sup> as Germany's greatest contribution in the field of political organization and as an encouraging example for the whole world. It was indeed the German civil service which, long before Germany entered the era of industrialization with all its new governmental responsibilities, had already "vitalized the state on its constructive side and its active rather than its passive aspects."<sup>3</sup>

Under the emblems of German pre-war monarchy—symbols of continuity and stability—the public service stood firmly beyond the petty quarrels of the day, beyond the economic struggle for power, and beyond the political strife of various factions.<sup>4</sup> It was non-partisan as much as the dynasty was non-partisan. On neutralized ground, it grew in "vigor and ethical grandeur"<sup>5</sup> without ever becoming a national issue.<sup>6</sup>

In the modern "service state,"<sup>7</sup> it is still possible for the people to overthrow the government. It is, however, no longer practicable to dispose

<sup>2</sup> Frederick F. Blachly and Miriam E. Oatman, *The Government and Administration of Germany* (Baltimore, 1928), p. 406; Charles E. Merriam, *The Making of Citizens* (Chicago, 1931), p. 200; Roger H. Wells, *German Cities* (Princeton, 1932), pp. 3, 261 ff; Finer, *loc. cit.*, Vol. II, p. 1499. Finer has apparently modified his previous contention that the German pre-war civil service "was responsible to nothing but its own conscience" (*The British Civil Service*, London, 1927, p. 9). Here Finer has certainly been a victim of a widespread misunderstanding. As I have pointed out elsewhere ("Berufsbeamtentum in England," 89 *Zeitschrift für die Gesamte Staatswissenschaft*, 459), the executive power since the advent of the German *Rechtsstaat* in the course of the nineteenth century was no longer allowed to rise above the law, but its exercise was definitely *subject to the law*. Thus the theory of German administrative law has always stressed its function as a protection of the citizen from arbitrary (though perhaps benevolent) action of administrative bodies rather than giving *plein pouvoir* to public authorities for the sake of authority alone. In this regard, the New Deal in Germany seems to initiate certain changes.

<sup>3</sup> Merriam, *loc. cit.*, p. 200. See also Otto Koellreutter, "Volk und Staat in der Verfassungskrise," in Fritz Berber (ed.), *Jahrbuch für Politische Forschung* (Berlin, 1933), p. 31: The German civil service "has, in long tradition, given to the German state its specific features."

<sup>4</sup> See for a brief review of the general situation as contrasted with that in the United States, Fritz Morstein Marx, "Verwaltungsreform in den Vereinigten Staaten," 38 *Verwaltungsarchiv*, 82 ff. A comprehensive analysis of the German civil service in the early constitutional period is presented in Theodor Wilhelm, *Die Idee des Berufsbeamtentums* (Tübingen, 1933). See also the able discussion in Walter L. Dorn, "The Prussian Bureaucracy in the Eighteenth Century," 46 and 47 *Political Science Quarterly*, 75 ff., 403 ff., and 259 ff. (1931 and 1932).

<sup>5</sup> Carl L. Friedrich, "The German and the Prussian Civil Service," in Leonard D. White (ed.), *The Civil Service in the Modern State* (Chicago, 1930), p. 385.

<sup>6</sup> As, for instance, the British civil service in the (*mutatis mutandis*) corresponding phase of development during the post-war period.

<sup>7</sup> Leonard D. White, *Trends in Public Administration* (New York and London, 1933), p. 341.

of the instrument of government. When, in 1919, the Constitutional Convention assembled in Weimar in order to take stock of what was left of Germany after an exhausting war which ended in revolution, the civil service had nothing to fear. On the contrary, it found itself courted by nearly all those political groups which were united in the desire for quick reconstruction of the Reich, surrounded by the cannon muzzles of a hostile world.<sup>8</sup> Moreover, the merits of civil service had been tested throughout German history; and the whole people were trained in administration-mindedness. The embodiment of far-reaching civil service "rights" in the new constitution bears witness to this situation.

The framers of the Weimar constitution saw that parliamentary government in a profoundly democratized republic with changing majorities would lead to unbearable tension in the administrative branch unless the principle of civil service neutrality was objectified through constitutional law. "Civil servants," the constitution<sup>9</sup> proclaims, "are servants of the whole nation, not of a party." Through the medium of those provisions of the different civil service acts, national and state, which define the general official duties of public officers in the form of elastic clauses,<sup>10</sup> the

<sup>8</sup> Thus it is not an exaggeration to say that a lasting reconsolidation after the turnover of November, 1918, did not occur before the civil service had placed itself "on the basis of hard facts"—a then famous slogan in Germany. See Fritz Morstein Marx, "Die Verfassungs- und Verwaltungsrechtentwicklung in den drei Hansestädten Hamburg, Bremen, und Lübeck, 1918–1928," 16 *Jahrbuch des Öffentlichen Rechts*, 52 ff. (1928).

<sup>9</sup> Art. 130 of the Weimar constitution. For references on this provision, see Gerhard Anschütz, *Die Verfassung des Deutschen Reichs vom 11. August 1919*, 14th ed. (Berlin, 1933), p. 602. This latest (and presumably last) edition represents the standard work on the Weimar constitution. See also my review of the volume in 27 *American Political Science Review*, 646–647 (1933).

<sup>10</sup> Cf. Sec. 10 of the National Civil Service Act: "Every civil servant is obliged to fulfill conscientiously, according to the constitution and the laws, the duties of the office conferred upon him and to prove himself in his behavior inside and outside the office worthy of the esteem which his profession requires." The different state civil service acts contain corresponding provisions, often copied literally from Sec. 10 of the national act. Concerning disciplinary procedure, cf. A. Brand, *Die Preussischen Dienststrafordnungen vom 27. Januar 1932*, 2nd ed. (Berlin, 1932). A new *Landesdienststrafordnung* was promulgated in Saxony on June 19, 1933 (*Gesetzblatt*, p. 93); see Ender, "Das neue sächsische Dienststrafrecht," 62 *Juristische Wochenschrift*, 1636 ff. The draft of a new *Reichsdienststrafordnung* has already passed the Federal Council (*Reichsrat*) and will presumably receive reconsideration by the Hitler cabinet. Among the general treatises on German civil service law, mention may be made of A. Brand, *Gesetz über die Rechtsverhältnisse der Reichsbeamten*, 3rd ed. (Berlin, 1929); Adolf Arndt, *Das Reichsbeamtenrecht*, 4th ed. (Mannheim, Berlin, Leipzig, 1931); A. Brand, *Das Beamtenrecht (Die Rechtsverhältnisse der Preussischen Staats- und Kommunalbeamten)*, 3rd ed. (Berlin, 1928). See also Finer, *Modern Government*, Vol. II, p. 1375 ff., and Friedrich, *loc. cit.*, p. 385 ff. (with extensive bibliography).

institutional safeguard of political neutrality became at once effective, and was rigidly upheld by the disciplinary courts. No civil servant was permitted even to impair the citizen's faith in administrative impartiality through actions which, though perhaps as such free from blame, might raise doubts in the mind of the public.<sup>11</sup> On the other hand, German bureaucracy was itself well aware that its entanglement as a body in party politics would necessarily result in a conflict with the idea of life tenure in a state where government depended on the electorate.<sup>12</sup>

Briefly, the constitutional postulate of civil service neutrality was a prerequisite for a continued functioning of German bureaucracy as the instrument of government in a pluralistic party state. In the light of this principle, the "fundamental rights" of the civil service<sup>13</sup> had to be construed. It was to this test that the question of justified exercise or inadmissible abuse had to be put. Never could the public officer claim to be as free in his whole conduct of life as a private citizen. As an organic atom of the state, he continually represented<sup>14</sup> the substance of the state. His loyalty, therefore, was of a more unconditional nature as contrasted with mere civic allegiance. On no account could he consider himself entitled to embark upon any form of violent opposition to the state, either through strikes<sup>15</sup> or by participation in revolutionary movements.<sup>16</sup>

<sup>11</sup> "In his official activity, the civil servant must pursue the common good, and not only be impartial but even not endanger his impartiality nor give occasion for distrust of his impartiality." Arndt, *loc. cit.*, p. 33, bases this statement on a careful condensation of recent disciplinary decisions of the National Supreme Disciplinary Court, the Prussian Supreme Administrative Court, and the Disciplinary Division of the *Kammergericht*. See National Supreme Disciplinary Court, in Alfred Schulze and Walter Simons, *Die Rechtsprechung des Reichsdisziplinargerichtshofs* (Berlin, 1926), p. 141 ff., 146 ff., 148 ff., and 279 ff.; *Entscheidungen des Preussischen Oberverwaltungsgerichts*, Vol. 76 (1922), p. 473 ff., Vol. 79 (1925), p. 436 ff.; *Entscheidungen des Grossen Disziplinarsenats des Kammergerichts in Disziplinarverfahren gegen Preussische Richter und Notare* (Berlin, 1927), p. 133.

<sup>12</sup> Fritz Morstein Marx, "Verwaltungsrecht in England," 36 *Verwaltungsarchiv*, 438-439 (1931).

<sup>13</sup> The basis of these "fundamental rights" is laid down in Article 130 of the Weimar constitution: "All civil servants are guaranteed freedom of political opinion and freedom of association." As a matter of terminology, we are here concerned only with *civic* "rights," in contrast to those constitutional provisions which circumscribe the immediate *official* status of civil servants, e.g., the guaranty of life tenure.

<sup>14</sup> "The office embraces the whole personality of the civil servant. Never is he only a private citizen." Prussian Supreme Administrative Court: 56 *Juristische Wochenschrift*, 2867 (1927).

<sup>15</sup> National Supreme Disciplinary Court, in Schulze and Simons, *loc. cit.*, p. 73 ff., 85 ff., 86 ff., and 404 ff. For further references, see Arndt, *loc. cit.*, p. 35.

<sup>16</sup> For one of the most instructive presentations of the controversial subject of party activity of civil servants, see Gerhard Anschütz and Karl Glockner, *Die politische Betätigung der Beamten* (Bühl, 1930). Those aspects which, in the light of theory and practice, represent actual law are brought together in Anschütz, *loc. cit.*,

Within these boundaries, however, there was a spacious field of individual liberty, political privacy, and civic discretion for the German civil servant. It was indeed significant for the tolerant spirit of Weimar democracy that even occasional transgressions of the boundaries were but reluctantly taken up for disciplinary action. Paradoxical though it may sound, the generous grant of civil service "rights" was destined to create weakness rather than strength under a governmental system which saw a good deal of its self-assurance absorbed in the tentative adjustment to hitherto unexperienced principles of democratic rule which were without distinct tradition in Germany. For it was precisely the ominous though unintentional result of this grant that the civil service was dragged closer to the arena of party politics than was desirable on the eve of Germany's tempestuous post-war epoch.<sup>17</sup> After all, it cannot be said that repeated efforts at political interference in the immediate conduct of administration, launched by different parties under a grave but "expedient" misappre-

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p. 23, in the following restatement: "It is incontestable that a civil servant never violates his official duty if he merely agrees with a creed of revolutionary character without joining the party in question or making his revolutionary creed conspicuous through actions. It is incontestable, too, that the profession of such a creed is only permitted within the special limitations resulting from the official position of the civil servant. Furthermore, it is incontestable that every action of a civil servant in support of a revolutionary creed or movement, especially of the party in question, be it through contributions or other material support, be it through participation in party work or acceptance of party offices, represents always a disciplinary offense." It has been a noteworthy inconsistency of Weimar democracy that it refrained from rigidly suppressing as illegal those political parties which, according to the government, had given sufficient proof of aiming at the overthrow of government by force. Instead, the government was satisfied to issue temporary bans against the participation of civil servants in those parties. Thus the well-known decree of the former Prussian state cabinet of June 25, 1930, contains the following passages: "With regard to the development of the National Socialist German Workers' party and the Communist party of Germany, both parties must be considered as organizations aiming at the overthrow of the present government by violence. A civil servant who participates in such an organization or supports it by action or otherwise thereby violates the bond of loyalty toward the state which results from his position as civil servant, and is guilty of an offense against civil service discipline. It is, therefore, forbidden to all public officers to participate in those organizations or to support them by action or otherwise."

<sup>17</sup> Cf. in this context also Art. 39 of the Weimar constitution: "Civil servants and members of the armed forces need no leave for the performance of their duties as members of the Reichstag or of a state diet. If they become candidates for election to these legislative bodies, leave must be granted them for the amount of time necessary to prepare for their election." The national act of July 21, 1922, put distinct restrictions on the "freedom of political opinion" of civil servants only in so far as their *official* activities were concerned. It stated, however, in very broad terms that a civil servant must "abstain from all activities which are incompatible with his position as an official of the Republic," thereby also pointing to the behavior of civil servants outside the office. Cf. the extracts given in Friedrich, *loc. cit.*, p. 399.

hension of parliamentary government, met uninterruptedly with strict disapproval of bureaucracy *in corpore*. Instead, such inroads were encouraged by the ready response of those groups within the public service which, in consequence of their constitutionally guaranteed freedom of association, had been drawn into the party following. From this inconsistency arose most of the discrepancies which foreign critics<sup>18</sup> evidently had in mind when they mused over the final outcome of the "transition period to democratic responsibility."<sup>19</sup> On the whole, however, the German civil service was neither blind to its mission nor actually failed to work as an indispensable corrective<sup>20</sup> (not only functional but also spiritual) of parliamentarism as represented by a number of ardently competing factions.<sup>21</sup>

Prior to March, 1933, the possible rise of National Socialism to uncontested power and its uncompromising antagonistic attitude toward Weimar democracy left German bureaucracy almost unperturbed. It had viewed the swing of the pendulum of political power more than once. Cabinet ministers had come and gone often enough. Moreover, antagonism to Weimar democracy did not mean antagonism to the traditional idea of civil service. In fact, National Socialist propaganda—though invariably speaking down to the plain "masses"<sup>22</sup> of "the suffering and the peaceful, the discontented and the miserable,"<sup>23</sup> and therefore altogether unindulgent with those "in possession"—had always ringingly emphasized the virtues of German pre-war civil service,<sup>24</sup> despite Hitler's personal resentment toward a bureaucratic career.<sup>25</sup>

<sup>18</sup> Cf. Finer, *Modern Government*, Vol. II, p. 1499; Wells, *loc. cit.*, p. 261–262; Merriam, *loc. cit.*, pp. 200–201.

<sup>19</sup> Merriam, *ibid.*

<sup>20</sup> Cf. Fritz Morstein Marx, in 18 *Archiv des Öffentlichen Rechts*, 280 ff. Agreeing, Rolf Stödter, *Öffentlichrechliche Entschädigung* (Hamburg, 1933), p. 254. See also Fritz Fleiner, *Institutionen des Deutschen Verwaltungsrechts*, 8th ed. (Tübingen, 1928), p. 94, who emphasizes that Germany did not cease to be a *Beamtenstaat* after the transformation into a republic. Cf. also my review of the book in 87 *Zeitschrift für die Gesamte Staatswissenschaft*, 379 ff. Finer, *Modern Government*, Vol. I, p. 227, cites my *Variationen über Richterliche Zuständigkeit zur Prüfung der Rechtmäßigkeit des Gesetzes* (Berlin-Grunewald, 1927) as evidence for the contention that "democracy has, or ultimately will, cause its [German bureaucracy's] corruption." My *Variationen*, however, do not contain any suggestion of that sort. Cf. Fritz Morstein Marx, in 23 *Archiv des Öffentlichen Rechts*, 369 ff. (1933).

<sup>21</sup> This general situation and its implications is ably discussed in Arnold Köttgen, *Das Deutsche Berufsbeamtenamt und die parlamentarische Demokratie* (Berlin and Leipzig, 1928). For a briefer survey, cf. Fritz Morstein Marx, "Civil Service and Democracy," 4 *Amerika-Post*, 277 ff. (1932), and "Training Municipal Officials in Germany After Entry into the Service," 13 *Public Management*, 334 ff. (1931).

<sup>22</sup> Adolf Hitler, *Mein Kampf*, 22nd ed. (München, 1933), p. 196.

<sup>23</sup> Hitler, *loc. cit.*, p. 364.

<sup>24</sup> Hitler, *loc. cit.*, p. 309. See also Müller, *Beamtentum und Nationalsozialismus*,

Yet the medal had a reverse side. The civil service was not without an Achilles' heel. The Weimar constitution had bestowed upon it the fateful privilege of free party affiliation. As long as the governmental coalitions in Germany changed only within the spiritual borderlines of Weimar ideology, the civic mobilization of bureaucracy meant no more than merely a handicap. A complete shift of ideology, however, could easily turn the handicap into a menace. Too many servants of the "whole nation" had already made fullest use of their civic franchise, while the political atmosphere, at least since 1928, had grown tense as never before. And since, in its struggle for power, the National Socialist party had pursued the policy of most ruthless opposition<sup>26</sup> to legislative bodies as well as to administrative departments, few of them had found their way into the camp of the spokesmen of the Third Reich.<sup>27</sup> This fact gave color to National Socialist agitation. The line of demarcation between friend and foe offered itself. Party pamphlets for political home-consumption pictured the entire public service as permeated and dangerously infected by *Systembeamte*, i.e., officials representative of the "Weimar system," or, more directly, with definite anti-National Socialist leanings. Thus the issue of civil service restoration became paramount in the National Socialist program of salvation. How far it would be carried into practice remained, however, to be seen.<sup>28</sup>

Weimar democracy had been fully conscious of the relative character of political truth.<sup>29</sup> National Socialism advanced absolute claims based on the infallibility of a creed of religious zeal. A party conquering the state by means of electoral procedure is a phenomenon which has been observed in many a landslide. That government assumes unlimited responsibility for society has been experienced in many an emergency.<sup>30</sup>

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4th ed. (München, 1933), p. 9 ff. Hitler has, however, talked in very strong terms on the "arrogant" mental attitude of the higher civil service in pre-war times; *loc. cit.*, p. 352.

<sup>25</sup> Hitler as a youth became "thoroughly sick" of the idea of entering the civil service; *loc. cit.*, p. 6. His antipathy against the public service as a profession was "fundamental"; *loc. cit.*, p. 7.

<sup>26</sup> It may be recalled that this opposition had resulted in governmental decrees against the participation of civil servants in the National Socialist party; see note 16 *supra*.

<sup>27</sup> A National Socialist minister has recently stated in public that when he took office in March, 1933, he found but eighteen members of his party in his department, with a total personnel of more than two thousand officials.

<sup>28</sup> Wells, *loc. cit.*, p. 253, has already drawn attention to the fact that during the tenure of Minister Frick in Thuringia in previous years many a head "rolled in the sand." But party patronage and "restoration" are terms with fluent border-lines.

<sup>29</sup> Cf. Finer, *Modern Government*, Vol. I, p. 226; Fritz Morstein Marx, 23 *Archiv des Öffentlichen Rechts*, 369 ff. (1933).

<sup>30</sup> Comparative government reveals that the degree to which such a responsibility is actually realized corresponds to the severity of the emergency rather than to the

That a government, entrenching itself for an indefinite time, should fortify its political faith through transforming it into the official monopoly of pronounced and exclusive righteousness, public and private, is a momentous event without precedent in the history of German democracy.

In this way, the very base of political neutrality of the German public service was shaken. In whose interest should it guard its neutrality when National Socialism had come to mean German unity, German valor, and German future? Did not the people and the civil service mutually depend on each other?<sup>31</sup> Neutrality was, after all, only readiness loyally to serve the opposition in case it should succeed the present government. National Socialism was ideologically without opposition as well as succession. It boasted of its covenant with eternity. The National Socialist party was the only legitimate political representation of the German people.<sup>32</sup> There was no other party left. The foundation of new parties was labelled a criminal offense.<sup>33</sup>

Under these circumstances, the significance of civil service loyalty underwent a cardinal change of emphasis. Political neutrality had implied a certain passivity rather than whole-hearted support of the government of the day. The National Revolution, eager to line up the whole people, did not content itself with the pallid willingness of mere obedience on behalf of a hesitant civil service. As long as the public service was still the "backbone" of the state,<sup>34</sup> German bureaucracy could but reflect the new ideology. This new ideology demanded unreserved identification with the goals of the National Socialist movement. The civil servant, reads a governmental proclamation to German officialdom on the occasion of the last general elections, "is one of the most effective mediators between leader and people."<sup>35</sup> Only he can successfully work as a mediator who is penetrated by the belief which he is supposed to spread among others. From the National Socialist point of view, it was a minimum requirement for this task to be at least politically reliable.

Duly authorized by the Enabling Act of March 24, 1933,<sup>36</sup> which prac-

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social traditions of a country. Cf. Luther Gulick, "Politics, Administration, and the New Deal," 169 *Annals of the American Academy of Political and Social Science*, 55 ff. (Sept., 1933).

<sup>31</sup> Arnold Köttgen, "Aufgabe und Verfassungsrechtliche Stellung des Berufsbeamten im modernen Staat," in Fritz Berber (ed.), *Jahrbuch für Politische Forschung*, (Berlin, 1933), p. 128.

<sup>32</sup> Act of July 14, 1933 (*Reichsgesetzblatt*, I, p. 479).

<sup>33</sup> Sec. 2 of the act of July 14, 1933.

<sup>34</sup> Carl J. Friedrich, "The Development of the Executive Power in Germany," 27 *American Political Science Review*, 203 (1933).

<sup>35</sup> Proclamation of National Minister of the Interior, Dr. Frick; *Hamburger Tageblatt*, No. 279 (November 11, 1933).

<sup>36</sup> *Gesetz zur Behebung der Not von Volk und Reich* of March 24, 1933 (*Reichsgesetzblatt*, I, p. 141).

tically became the generative cell of all National Socialist constitutional legislation, the Hitler cabinet speeded the remodeling of the public service. Two "cabinet acts" of different character were employed to bring about the preliminary adaptation before the passage of a completely overhauled general civil service law which is to be expected in the near future. The first of these, the Act for the Restoration of the Civil Service,<sup>37</sup> concentrates on raking through the existing personnel, while the second represents a rather unsystematic attempt to adjust the National Civil Service Act and correlated statutory provisions to the need of the hour.<sup>38</sup>

The Restoration Act had originally been advertised as the overdue measure to purify the civil service from those political favorites who, without possessing the required qualification or its equivalent, had been ushered into official positions by the so-called "Weimar system parties." It also was commonly accepted in advance that the bill would make good the National Socialist pledge to end the tenure of those civil servants who were of "non-Aryan" descent. When, however, the act made its appearance in the statute book, it became evident that the cabinet of the National Revolution had obtained a firm grip on the public service as a whole.

First, so-called "party book-officials" were to be wiped out of the service; they were defined as persons who had entered the civil service since November, 1918,<sup>39</sup> without either complying with the general require-

<sup>37</sup> *Gesetz zur Wiederherstellung des Berufsbeamtenstums* of April 7, 1933 (*Reichsgesetzblatt*, I, p. 175), as amended by the "cabinet acts" of June 23, July 20, and September 22, 1933 (*Reichsgesetzblatt*, I, p. 389, 518, and 655), with five ordinances for its enactment of April 11, May 4, May 6, July 18, and September 29, 1933 (*Reichsgesetzblatt*, I, pp. 195, 233, 245, 515, and 697). The second ordinance has been amended by two further ordinances of July 7 and September 28, 1933 (*Reichsgesetzblatt*, I, pp. 458 and 678). See Albert Gorter, *Gesetz zur Wiederherstellung des Berufsbeamtenstums mit den Durchführungsbestimmungen und ergänzenden Vorschriften des Reiches und der Länder* (München, 1933); Hanns Seel, *Erneuerung des Berufsbeamtenstums* (Berlin, 1933); Hanns Seel and Arthur B. Krause, *Der Behördenangestellte im Neuen Reich* (Berlin, 1933); Carl Heyland, "Das Reichsgesetz zur Wiederherstellung des Berufsbeamtenstums vom 7. April 1933," 62 *Juristische Wochenschrift*, 1164 ff.; Hoche, "Die Durchführungsverschriften zum Gesetz zur Wiederherstellung des Berufsbeamtenstums," 38 *Deutsche Juristen-Zeitung*, 720 ff.

<sup>38</sup> *Gesetz zur Änderung von Vorschriften auf dem Gebiete des allgemeinen Beamten-, des Besoldungs- und des Versorgungsrechts* of June 30, 1933 (*Reichsgesetzblatt*, I, p. 433). See Oskar G. Fischbach, *Das Reichsgesetz zur Änderung von Vorschriften auf dem Gebiete des allgemeinen Beamten-, des Besoldungs- und des Versorgungsrechts* (Berlin and Leipzig, 1933); Hanns Seel, *Die Neuordnung des Beamtenrechts* (Berlin, 1933); Carl Heyland, "Reichsgesetz zur Änderung von Vorschriften auf dem Gebiete des allgemeinen Beamten-, des Besoldungs- und des Versorgungsrechts vom 30. Juni 1933," 62 *Juristische Wochenschrift*, 1977 ff. and 2547 ff. (1933).

<sup>39</sup> The exact date is November 9, 1918, pointing to the revolutionary overthrow of the old régime.

ments of the career or possessing the customary training or other fitness for the office<sup>40</sup> at the time of their admission.<sup>41</sup> Though the definition left much space for the exercise of free discretion, the total yield under this provision proved to be much more meager than the populace had come to assume during the campaign. In fact, as far as an estimate is possible, it is safe to say that the absolute figures of dismissals under this section are rather insignificant in comparison with the other causes of removal in the Restoration Act.<sup>42</sup> From the professional angle, German bureaucracy was still impressively homogeneous. Second, civil servants of "non-Aryan" parentage were to be retired<sup>43</sup> unless they had been in the service since pre-war days<sup>44</sup> or given proof of personal sacrifice during the war.<sup>45</sup> While both these clauses pointed to specific groups in the service, the Restoration Act, treading the same path as Fascist legislation in Italy,<sup>46</sup> addressed German bureaucracy as a whole in delegating to departmental heads<sup>47</sup> the power to suggest the dismissal of public officers who do not give guaranty that they fully identify themselves with the New Deal.<sup>48</sup> Political reliability had definitely superseded neutrality. A Damocles' sword was hung over every civil servant. Dismissal for political unreliability represented a dishonorable discharge,<sup>49</sup> in contrast with the forced retirement of "non-Aryans." And finally, if a still smoother procedure should be advisable, the Restoration Act provided that every public officer could be put on pension<sup>50</sup> should the interest of the service or the simplification of administration so necessitate. This section was often employed against those whose political convictions were supposedly not compatible with the New Deal, even though they had not caused reflections

<sup>40</sup> Sec. 2 of the act.

<sup>41</sup> See the ordinance of May 6, 1933 (*Reichsgesetzblatt*, I, p. 245).

<sup>42</sup> According to one of the official press releases (chosen at random) of the Hamburg state cabinet, out of 69 recently removed officials, not more than two were dismissed as "party book-officials". *Hamburger Fremdenblatt*, No. 238 (August 29, 1933).

<sup>43</sup> Sec 3 of the act..

<sup>44</sup> The exact date is August 1, 1914, pointing to the beginning of the war.

<sup>45</sup> The privilege extends to those who, during the World War, actually fought at the front, or whose fathers, sons, or husbands were killed in action. It applies also to those who have participated in military engagements as members of the post-war voluntary corps or against the foes of the National Revolution. See the ordinance of May 6, 1933.

<sup>46</sup> Under the act of December 24, 1925, an exceptional power of removal was granted against those public servants "che, per ragioni di manifestazioni compuite in ufficio o fuori di ufficio, non dana piena garanzia di un fedele adempimento dei loro doveri o si pongano in condizioni di incompatibilità con le generali direttive politiche del Governo," *Legge* No. 2300 (*Leggi e Decreti del Regno d'Italia*, 1926, p. 3).

<sup>47</sup> See the ordinance of May 6, 1933.

<sup>48</sup> Sec. 4 of the act. See also the ordinance of May 6, 1933.

<sup>49</sup> Heyland, *loc. cit.*, p. 1166.

<sup>50</sup> Sec. 6 of the act.

on their official conduct.<sup>51</sup> It also opened a welcome avenue to secure racial homogeneity in case the so-called "Aryan section" had not brought about the desirable result against "old-timers" or war veterans.<sup>52</sup> In order to facilitate the transfer of civil servants, especially from ministerial departments to the field service,<sup>53</sup> the Restoration Act rounded out its program by granting the right to administrative departments freely to move public servants into other positions of equivalent career,<sup>54</sup> even if the new position should pay a smaller salary and be of lower rank.<sup>55</sup> In the interest of accelerated action, administrative authorities were relieved from lengthy investigation. Each civil servant, on request of his departmental chief, had to fill out a comprehensive questionnaire on his professional training, his war service, his antecedents (including his grandparents), and his party affiliations.<sup>56</sup> Nobody was entitled to a formal hearing; but the departments were officially advised to give attention to any comments that the civil servant should care to bring forward "within three days."<sup>57</sup> Deviating openly from the previous trend of German administrative law, the Restoration Act did not allow appeal of final decisions rendered under the act to the law courts or to administrative or disciplinary tribunals.<sup>58</sup>

While the Restoration Act was a transitory, though revolutionary, measure aimed mainly at a rapid and effective adjustment of the higher civil service,<sup>59</sup> the subsequent act of June 30, 1933, turned its face toward the future. For our purpose, we may pass over its many detailed innovations, including its exceptional provisions concerning women as public officers.<sup>60</sup> Here it suffices to emphasize that pronouncement which writes

<sup>51</sup> According to one of the official press releases (see note 42 *supra*), out of 69 public officers recently removed under the Restoration Act, not less than 47 were retired under section 6 of the act.

<sup>52</sup> According to the same press release (see note 51 *supra*), out of 69 recently removed public officers, only four were retired as "non-Aryans," while not more than 16 were dismissed as politically unreliable. See also note 45 *supra*.

<sup>53</sup> Seel, *Erneuerung*, p. 32.

<sup>54</sup> Sec. 5 of the act.

<sup>55</sup> The civil servant, however, for the time being keeps his existing title and salary, and is allowed to ask to be put on pension instead.

<sup>56</sup> No. 3 (II) of the ordinance of April 11, 1933 (*Reichsgesetzblatt*, I, p. 195). A sample of the questionnaire is to be found as the annex to the ordinance of May 6, 1933.

<sup>57</sup> See the ordinance of May 6, 1933.

<sup>58</sup> Sec. 7 (I) of the act.

<sup>59</sup> See the ordinance of May 6, 1933.

<sup>60</sup> Henceforth women must be at least 35 years old before they may be appointed as public officers for life (Sec. 1a (II) of the National Civil Service Act as amended by the act of June 30, 1933). Women civil servants must be dismissed in case of their marriage if their economic future appears to be permanently guaranteed by the family income. (Sec. 1 (II) of the act on Legal Position of Women Civil Servants of May 30, 1932 (*Reichsgesetzblatt*, I, p. 245) as amended by the act of June 30, 1933. As far as the salary of women civil servants is concerned, their claim to equal pay under the Weimar constitution (Art. 128) has been set aside (Sec. 6b, Chap. III, of the act of June 30, 1933).

an undebatable *finis* to the chapter of civil service neutrality. It reads: "As national civil servant may only be appointed one who possesses either the training required for his career or the customary training or other special fitness for the office conferred upon him and gives the guaranty that he will at all times fully identify himself with the state of the National Revolution."<sup>61</sup> According to express provision of the act, the same applies to any other public officer, state or local, throughout the Reich.<sup>62</sup>

Never before in the history of German bureaucracy had a change of such import taken place in so short a time. It touched the foundation of established civil service ethics. It raised the most serious spiritual conflict in the hearts of hundreds of thousands of sincere neutral-minded servants of the state for whom National Socialism had thus far been nothing else than the creed of just another party.<sup>63</sup> The new faith had soared down on them like a hawk. Before they found time to contemplate its full import they were reminded that, from now on, they were Hitler's "soldiers in plain clothes."<sup>64</sup> They were ordered to greet each other and the public with raised arm in "German salute."<sup>65</sup>

Moreover, the Restoration Act had broken up the former impermeability of German bureaucracy. Though, in my estimate, the actual turnover under the act did not surpass ten per cent, it carried disastrous uncertainty and an atmosphere of distrust into the ranks of the civil service. The National Revolution took its course "in a turmoil of strength

<sup>61</sup> Sect. 1a (I) of the National Civil Service Act as amended by the act of June 30, 1933. And since the civil servant must prove himself in his "whole mode of life" worthy of his profession (Arndt, *loc. cit.*, p. 38), "non-Aryans" or persons married to a "non-Aryan" may no longer be appointed as civil servants; civil servants of "Aryan" parentage who marry a person of "non-Aryan" descent must be dismissed (Sec. 1a (III) of the National Civil Service Act as amended by the act of June 30, 1933). See also the regulations defining "non-Aryan" parentage, issued by the national minister of the interior on August 8, 1933 (*Reichsgesetzblatt*, I, p. 575).

<sup>62</sup> Sec. 6 (II) of the act of June 30, 1933.

<sup>63</sup> Müller, *loc. cit.*, p. 52, explains (from the National Socialist point of view) that similar conflicts "always result" in damage to "the authority of the state."

<sup>64</sup> Müller, *loc. cit.*, p. 53.

<sup>65</sup> Decree of the national minister of the interior of July 14, 1933. In the same line are other recent regulations. For instance, civil servants have never been permitted to carry emblems or badges of political character while in service. Cf. Brand, *Reichsbeamten gesetze*, p. 103, and Arndt, *loc. cit.*, p. 45. However, according to a decree of the Hamburg state cabinet of May 12, 1933, "emblems or badges or uniforms of the National Socialist German Workers' party or of the Steel Helmets are not considered as such." See also a decree of the Hamburg state cabinet of March 29, 1933, which forbids civil servants "to belong to any Marxist (i.e., Social Democratic or Communist) organizations." Cf. the following extract from a decree of the national minister of the interior of July 17, 1933: "The professional interests of the civil servants will be pursued by the state itself. Petitions of civil servants or of civil service organizations concerning questions of salary, classification, career, etc., are therefore not only unnecessary but also inadmissible."

and weakness."<sup>66</sup> It necessarily affected the morale and the discipline within the public service. Old feuds among colleagues as well as between superiors and subordinates were renewed. A wave of denunciations swept the desks of personnel officers. The spirit of revenge raised its shameless head. Many a chronic failure in the service scented a new era of promise. The traditional hierarchy founded on rank and standing crumpled. The fear of removal, in the midst of a time of widespread unemployment, engendered cowardice. Outside influences found an open door. For a while, the new National Socialist staff organization<sup>67</sup> wielded more controlling power than the legitimate superiors. But even within this organization, and between it and the National Socialist heads of departments, tension originated easily. For the time being, public administration, deprived of its stability, turned introvert.

Doubtless, consolidation will be achieved in the course of time. Obedience and discipline have too long been traditional virtues of German bureaucracy to fade away forever under the present ordeal. The disappearance of competing political parties means, furthermore, salvation from the conflict of competing loyalties. A permanence of the one-party state will certainly ease transitional difficulties for the German civil service; for there is no more essential condition for the smooth functioning of the public service as the instrument of government than stability. And the ethical foundation of civil service ideology has much in common with the emotional pattern of the New Deal, with its emphasis on allegiance, devotion, and sacrifice<sup>68</sup> and its middle-class appeals.

Yet the substantial identity of the victorious National Socialist party and the considerably centralized<sup>69</sup> Reich will cast its shadow on German bureaucracy. The civil service as such had no part in the erection of the Third Reich.<sup>70</sup> From the National Socialist point of view, it had failed in the struggle for German rebirth as bitterly as had the German intelligentsia. Men "with a hard will and still harder fists"<sup>71</sup> had accomplished whatever the National Revolution could boast of. And the menace of

<sup>66</sup> Oswald Spengler, *Jahre der Entscheidung. I: Deutschland und die Weltgeschichtliche Entwicklung* (München, 1933), p. ix.

<sup>67</sup> NSBO., i.e., *Nationalsozialistische Betriebszellen-Organisation*.

<sup>68</sup> Merriam, *loc. cit.*, p. 200, correctly observes that the German civil servants, even during the post-war era, "have helped to perpetuate in actual practice the German philosophical theory of *Der Staat* as the supreme human institution for the accomplishment of man's highest purposes."

<sup>69</sup> See *Gesetz zur Behebung der Not von Volk und Reich* (note 36 *supra*); *Erstes Gleichschaltungsgesetz* of March 31, 1933 (*Reichsgesetzblatt*, I, p. 153); *Reichsstatthaltergesetz* of April 7, 1933 (*Reichsgesetzblatt*, I, p. 173), as amended by the acts of April 25 and May 26, 1933 (*Reichsgesetzblatt*, I, pp. 225 and 293).

<sup>70</sup> Hanns Seel, *Der Beamte im Neuen Staat* (Berlin, 1933), p. 10.

<sup>71</sup> Seel, *Der Beamte*, p. 11.

"Marxism" and Communism was as yet not destroyed.<sup>72</sup> In such a dangerous time it was requisite in the eyes of the new authorities to fill official positions not only with civil servants, but also with "trustworthy and tried fighters of the national front,"<sup>73</sup> as one of the commentators on the Restoration Act explains. Moreover, through the institution of "political officials,"<sup>74</sup> which had already existed in pre-war times, the New Deal could comfortably "adapt the highest and leading administrative positions to the necessities of politics."<sup>75</sup> Here the outsider, too, was welcome.

The transformation of this theory of continued emergency into practice cannot, I think, justly be termed the adoption of the "spoils system" as long as it is not extended farther. It bears, however, certain implications. We must keep in mind that in a state without opposition political reliability is but the minimum requirement for office-holding. In competition with adherents of the party, a merely politically reliable man is bound to be handicapped. The holder of the approved belief will know his way through the inspiration of faith. He can execute his faith without specific training.<sup>76</sup> In a spiritually homogeneous people, he can enforce the will of the leader without formal safeguards of "independence" through life tenure. Such logic could readily legitimize a thoroughgoing transformation of the legal status of civil servants, although as yet there are no sound indications of Germany's intention to discard life appointment as a principle of personnel management in public administration.

On the other hand, it is not too hazardous to say that the institutional preponderance of bureaucracy as an integrating force in German government is definitely challenged. The rôle of the guardian of the public weal has been taken over by the National Socialist party. It represents the will of the community. And it is permeated by the task of guiding the nation to reconstruction, spiritual, political, and economic. As long as it continually creates an "elite" of its own, keen and self-assertive, this "elite" will reduce the functional performance of the leading class in the civil service to a mere supervision of administrative enactment in its technical aspects. That, too, would mean a completely new page in the history of German bureaucracy.

FRITZ MORSTEIN MARX.

<sup>72</sup> *Ibid.*, pp. 10, 19.

<sup>73</sup> *Ibid.*, p. 9 ff.

<sup>74</sup> Cf. Otto Goldberg, *Die Politischen Beamten im Deutschen Rechte, insbesondere im Reich, in Preussen und Sachsen* (Dresden, 1932).

<sup>75</sup> Seel, *Der Beamte*, pp. 11-12.

<sup>76</sup> Addressing the 11 *Reichsstatthalter* on July 6, 1933, Chancellor Hitler has stressed the necessity of leaving the management in *economic* life to the competent. "*In der Wirtschaft*," he urged, "*darf nur das Können ausschlaggebend sein*" (*Hamburger Anzeiger*, No. 156, July 7, 1933). Here, however, the emphasis is on business only, not on the performance of public functions.

**Surveys of State Administrative Organization: Iowa and Wyoming.<sup>1</sup>** Largely in response to the urgings of the newly elected Democratic governor of Iowa, Clyde L. Herring, the forty-fifth general assembly early in its session passed the necessary legislation to make possible a survey of state and local government in Iowa by the Brookings Institute for Government Research. The survey was begun early in February, 1933; and by the end of July, it was possible to file the report with the interim committee of the legislature which had the matter in hand. This report was published by the state in January, 1934, as a paper-covered volume of 650 closely printed pages. This volume does not include Part II, Chapters 16-20 inclusive, which deal with revenue; this portion was printed separately in pamphlet form for the use of the special session of the general assembly in November.

The report deals largely with the state administrative agencies, county and township government, and the school system. The legislative and judicial branches are not touched upon, neither is municipal government; and there is only a brief treatment of elections. The existing situation is described clearly and criticized carefully. A comprehensive, thoroughgoing program of reform is offered and defended.

The report does not advocate putting all of the administrative services into a few big departments, headed by appointed secretaries who might possibly constitute a governor's cabinet. In this respect it departs from the model set by Illinois in 1917, and recommended by many writers in the field of administration. This survey would abolish about half of the existing administrative agencies, and would leave twenty-five separate and distinct departments or offices. Many of these would remain much as they are, after a redistribution of functions. Of the existing principal administrative offices, that of secretary of state suffers the most serious deflation. Under the recommendations of the survey, it would become a mere bureau of records, under a person appointed by the governor and accountable to him. This department's present functions of administering elections, the automobile license laws, the blue sky laws, and certain duties in connection with supervision of real estate operators, are all distributed to other departments.

The attorney-general's office becomes a department of justice and looms up as the most potent of all the administrative agencies, unless perhaps it be the comptroller's office. The survey contemplates an appointed attorney-general, wholly responsible to the governor. This de-

<sup>1</sup> Report on a Survey of Administration in Iowa Submitted to Committee on Reduction of Government Expenditures by the Institute for Government Research of the Brookings Institution (Iowa City, 1933). State of Wyoming. Report made to the Special Legislative Committee on Organization and Revenue by Griffenhagen and Associates (Cheyenne, 1933).

partment would be amply equipped to enforce all laws and to relieve other departments of various inspectional duties which they now possess. As envisaged by the survey, it affords a striking example of integrating functions and of consolidating services of like character in one department.

The recommendations concerning education will strike many as very drastic, and would perhaps give rise to more differences of opinion among students of administration than most of the other suggestions. The existing state department, headed by an elected superintendent, would be abolished. The board of education, which is now composed of nine members, three appointed every two years for six-year terms, and which now controls the three institutions of higher learning, would be retained, though so altered that one member would be appointed each year for a nine-year term. Here is an outstanding illustration of a purpose to get one of the most important fields of state administration definitely removed from the control of the governor. The board of nine would appoint a superintendent to head up the public school system. Thus the institutions of higher learning and the school system would be integrated and centralized under one authority.

Iowa is now peppered with typical tiny school districts. The survey would sweep them all away and centralize the public schools, rural and city, under an elected county board of education. A substantial equalization fund would be set up by means of which the state would equalize to some extent the costs of public education; for it is believed that even the county unit would be too small to iron out the inequalities that are so glaringly apparent in connection with school finance.

It may be particularly significant that the plan for centralizing control of financial operations of the state in the hands of the governor and his appointed comptroller do not extend to the institutions under the control of the board of education. That agency is left free to collect, hold, and disburse revenues, such as tuition fees, gifts, etc., without turning them into the state treasury. Since these revenues constitute nearly one-half of the cost of maintaining the institutions, the exception is of considerable importance.

As said before, a characteristic thing about this survey is that its recommendations do not slavishly follow any of the orthodox dogmas of administrative reorganization. Thus the small number of big departments and the cabinet idea are set aside; and power to control administration is not concentrated in the governor. Many of the departments would be under the control of boards, the members of which have long, overlapping terms, organized thus for the very purpose, in part, of guarding against dictatorial control on the part of the governor.

A badly needed department of public welfare is provided for, headed

by a board of three appointees, sitting for six-year over-lapping terms, and having power to appoint a full-time director. It would take over control of the state hospitals and penal institutions, would contain several bureaus, concerned with such matters as child welfare, mental hygiene, etc., and also would have a large measure of supervisory control of county welfare units, which are contemplated in the survey. The department of health is not integrated with it.

The state's part in highway construction and maintenance would seem to be minimized. Iowa's system of primary roads is pretty well completed, and the survey would seem to contemplate a continuation of a large measure of county control in the matter of secondary road building and maintenance. This is another illustration of departure from the dogma of centralization.

On the other hand, a well conceived state tax commission is given adequate power to administer all the tax laws. This duty has been scattered among several agencies. An entirely new revenue program is devised for the state, the chief feature of which is a net income tax. The special session of the general assembly in 1933-34 enacted new taxation measures, including this plan for a net income tax, a two per cent corporation tax, and a two per cent retail sales tax.

A beautiful piece of work was done by the survey in the matter of unscrambling the functions of auditing, accounting, and budgeting. And best of all, the recommendations were adopted by the state very much as they were presented. This was done by the forty-fifth general assembly in the spring of 1933, before the survey was much more than well under way.

Iowa's old board of audit, an ex-officio agency charged with pre-auditing, and with ordering the issuance of warrants, was abolished. The auditor remains an elective officer, with the function of post-auditing all accounts. His power of auditing also extends to local government units. The state had a wholly inadequate budget system. The budget director was appointed by the governor, but held office for six years instead of the governor's two. No student of administration would need to be told that such a system will not work. Under the new plan, proposed by the survey, a comptroller, appointed by and wholly responsible to the governor, displaces the old budget director. The comptroller prepares the budget strictly as an agent of the governor. He also prescribes all accounting forms for all spending agencies, and receives their reports.

It is this new officer, the comptroller, who exercises the function of pre-audit, and issues warrants. Budget appropriations are to be looked upon merely as maximum appropriations. Each quarter, the spending agencies apply for their proportional allotments under the budget provisions. The comptroller may withhold allowances in case there is no money in the

treasury—not a very impressive power perhaps! And in case it becomes necessary to reduce allotments, they must all be reduced proportionately. This eliminates discretion and opportunities to discriminate unfairly. But it also eliminates the possibility of using revenues that are available to the best possible advantage. Nevertheless, the comptroller as set up in the new law has great possibilities, and the people of Iowa may anticipate much better financial administration than was ever possible under the old scheme.

Two entirely new state departments are provided for in the state purchasing agent and a state personnel board, both well conceived and badly needed in Iowa. The existing state board of health, the department of agriculture, and the railroad commission are not greatly altered, although it is stated that *when* the railroad commission is merged into a state utility commission, the members should be appointed instead of elected as they now are.

It is somewhat surprising to find the present wholly independent banking department and the insurance department left alone; although it is recommended that some day they be merged into a common department of business regulation which would include, as well, the administration of the blue sky laws, the supervision of the real estate business, and other like matters.

Recommendations concerning county government contemplate reducing all boards of supervisors to three, appointment of the county auditor and the treasurer by the board, and merging of the offices of recorder and court clerk into one, appointed by the district court. The county attorney would be appointed by the attorney-general—a recommendation that would encounter tremendous political resistance; and the coroner naturally is abolished. Obviously, these proposals involve drastic shortening of the county ballot, which of course is much to be desired. Townships would ultimately be abolished, which is likely to occur in any event, for this area is steadily being drained of its functions.

County consolidation is discussed as a theoretical possibility; but the enormous difficulties are appreciated, and it is recognized that the need for this is not so pressing in Iowa as in many other states. The contention that it would result in equalization of burdens is far more convincing than the argument that it would result in genuine reduction of costs.

To sum up: This survey is to be noted for its moderation. It contains fewer recommendations for drastic change than are found in most such surveys. An aggressive advocate of reform would continually be disturbed by the lack of positive, forceful recommendations in certain matters, and at such statements as this concerning the secretary of agriculture: ". . . it may be necessary at some time in the near future to consider changing this office from an elective to an appointive one." Aggressive

advocates of reform would want a positive assertion that the change should be made now. Such statements are rather frequent, and appear in connection with the attorney-general's office, the banking and insurance departments, the department of labor, the workmen's compensation service, and other agencies. Nevertheless, the absence of dogmatic assertion respecting many of these matters lends great value to the survey. It points the direction that reform should take without demanding that it be done at one stroke. And it should be said that there is no lack of positive assertion with respect to the really vital changes such as those involving the finance offices. Wise discrimination has been shown as to what is vital and what is not.

The Brookings Institution has rendered the state an extremely valuable service in helping to get some of these measures actually adopted, and has outlined an excellent foundation upon which Iowa can rebuild her administrative structure. An interim committee of the legislature will sit during the summer and autumn of 1934 to study the survey and bring in definite proposals for consideration by the forty-sixth general assembly in 1935. It is likely that substantial progress will be made next winter.

In February, 1933, the Wyoming legislature provided for a special joint committee to study all governmental functions in the state, with a view to recommending to a special session reforms which would tend to simplify and to reduce costs of government. This committee employed Messrs. Griffenhagen and Associates of Chicago to make a survey. The study was duly made, a report was filed, and the document was printed by the state in December, 1933. It appears in two paper-covered volumes embracing together about nine hundred pages.

This survey included all phases of government, not only administration, but also the legislative branch, the judiciary, and city government, as well as counties and school districts. Nevertheless, as might be expected, it is very largely devoted to state administrative reorganization and to revenue.

The existing governmental structure and processes of government are described at considerable length and are criticized thoroughly. Some of the criticism is more sweeping than tactful, and may well be expected to arouse hostility, no matter if it is fully deserved. Thus: "The present elective county superintendents are not properly qualified to supervise the rural schools of their counties; . . . In no cases are properly trained school administrators elected to the office" (I, p. 68).

It is interesting to observe that the Griffenhagen people in Wyoming, as well as other experts in other states, have recommended that one board of education, the members of which should be appointed for overlapping terms by the governor, should have full charge of the institutions of higher

learning and the public school system as well. Of more striking significance, however, is the bold recommendation that all local control of education be swept away. The state itself would become the unit for educational administration. Numerous tables of figures have been compiled to show the inequalities now existing among school districts. The figures are convincing, and it is apparent that school districts do not carry educational burdens in anything approaching reasonable proportion to their wealth. An effort was made to evaluate the quality of teaching in the district schools—the chief measures being academic degrees held by the teachers, and their years of experience. The conclusions, of somewhat doubtful value, support the main thesis that small school districts are altogether undesirable. However, the blunt assertion that a million dollars would be saved by going to the "state unit" plan may not carry conviction, in spite of the extended estimates of savings that are compiled to prove the point (I, p. 222).

Severe criticism of highway management by county authorities is followed up with the unequivocal recommendation: "That the boards of commissioners of the several counties be relieved entirely of all responsibility for public highways . . ." (I, p. 233). It is then proposed that a state highway department take over all the highways of the state and divide the state into ten districts for purposes of administration.

Assessment of property through elected county assessors is roundly condemned, as also is financial administration in the counties. It would appear that the system is "ridiculous" and is permeated with politics (I, p. 410). Police functions should be assumed by the state. The county does not appear to be a suitable area even for the administration of out-door poor relief. Hence one is not surprised to find that the survey is in favor, not merely of county consolidation, but of county *elimination*. It would be difficult to find anywhere in print a more complete and devastating indictment of county government than is to be found in this survey. In so far as mere figures can prove the case, the conclusions are rather convincing. From the point of view of saving dollars and cents, and the equitable distribution of the costs of government, Griffenhagen and Associates make it pretty clear that the county ought to be abolished. The case is especially strong because Wyoming is so thinly populated. But it is by no means so clear that local administration need continue to be so bad as they think it now is. Since there is very small possibility of Wyoming doing away with county government, it is to be regretted that this survey does not give more attention to the possibility of improving the machinery that is altogether likely to remain for many years to come.

Contemplating the virtual abolition of local government, outside of the municipalities, the survey suggests a compact, well integrated state administration to take over state and local functions. Eleven departments are

proposed, among which all administrative functions are to be distributed. Department heads are to be appointed. The department of finance looms up as an all-powerful department, quite overshadowing the others. In it would be found the usual finance functions: budget control, pre-audit and accounting, and also the functions of purchase and administration of personnel. Other proposed departments would be: state, law, military, education, welfare, highway, public works, state police, public lands, and insurance. It is to be observed that the state police unit is not tied in with a department of justice. The attorney-general is to conduct a law office and not a police force. Heads of departments are to constitute an administrative cabinet.

To this extent, the proposed set-up is orthodox, and represents the viewpoint of those who believe in a small number of big departments, all tied up to a chief executive. But very radical departures from American practice are suggested with respect to the chief executive and the legislature. It is proposed that the bicameral legislature be abolished, and that in its place there be a single-chamber legislature composed of from nine to twelve members elected through a system of proportional representation. This recommendation in itself is sufficiently startling; but the suggested relationship between the legislature and the executive and the administration is still more unusual.

There would be a state administrator, selected by the legislature and responsible to it. He, in turn, would appoint the various department heads and exercise supervisory control over them. Such a plan, of course, is an adaptation of the "manager" idea to state government. The position of the governor would seem to be somewhat anomalous. It is recommended (II, p. 222) "that the governor be elected by the legislature from among its members, or by the electorate directly, to serve as the presiding officer of the legislature and as the official head of the state government, but not as an administrative officer."

This is certainly a remarkable suggestion, and one cannot but be struck by the casual way in which the two alternatives are offered: selection by the legislature or election by the people! Although the governor would preside in the small legislative assembly, it appears that he would have no powers in relation to the state administrator. As an alternative to these suggestions, it is proposed that ". . . an assistant governor be appointed as a permanent and continuing technical officer, to be responsible to the governor for administration of the affairs of state." Surely here are some novel ideas for the student of political science to labor with.

The dominating thought running through this entire survey appears to be that government is like a business corporation. The criticisms offered and the changes recommended all reflect this underlying attitude. The legislature becomes a board of directors and appoints a manager. The

governor becomes an honorary figure-head. Counties are to be abolished because they are uneconomical. An exceedingly large amount of space and attention are given to auditing and accounting. Possible savings in dollars and cents are estimated at every turn, and are often predicated upon untried methods. School teachers are to be used as election officials in order to save money. Everything revolves around the central objective of efficiency and economy, from a business point of view.

To a great many people this would be the highest possible endorsement of the whole study; and certainly much credit is due for having adhered steadfastly to this line. However, students of political science may find the survey somewhat lacking in appreciation of other factors than dollars and cents efficiency. Good government is something more than good business; and what might be rather bad business could well be very good government. Authoritative control from above has much to recommend it in business, in terms of dollars and cents. It is by no means so certain that concentrated power, on the state level, of such governmental functions as highway administration and the management of schools would yield the same good results. This is especially true when political considerations are properly weighed, and when the interest of the people in what they conceive to be democracy and self-government is considered.

On the whole, the rest of the country might wish that Wyoming would try some of the reforms advocated in this survey. But the special session of the legislature which met last winter to consider the report adjourned without adopting them.

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## FOREIGN GOVERNMENTS AND POLITICS

**Constitutional Revision in Poland.** Following a day of parliamentary skirmishing during which the behavior of the majority sometimes recalled the parliamentary tactics of the illustrious American Speaker of the House of Representatives, Mr. Thomas B. Reed, the Polish Sejm, on January 26, adopted an entirely new constitution for Poland. The bill providing for this action had been introduced in the Sejm by Marshal Pilsudski's parliamentary allies, the government *bloc*, toward the end of 1933, but they had consistently failed to secure a majority of two-thirds demanded for amendments by the existing constitution. On the 26th, however, opposition deputies, in protest against the threats of the government *bloc* to alter the usual procedure as well as against the *bloc*'s attempt to dragoon them into acceptance of the bill, withdrew in a body. Instead of adjourning, the rump of the Sejm, on recommendation of M. Car, its deputy marshal, constituted itself a quorum and proceeded to rush the constitution bill through the required three readings and adopt it by unanimous vote.<sup>1</sup>

Although Marshal Pilsudski applauded the procedure of his partisans and joined them in ridiculing the opposition parties for their ineptitude as parliamentary tacticians, he is not quite satisfied with the proposed revision. Parliament has accordingly been adjourned to be reconvened in special session early in the summer.<sup>2</sup> During this special session it is expected that the Sejm will consider the Marshal's amendments and that the Senate will vote upon the bill as it originally passed the Sejm, modified by such amendments as the Sejm, guided by the Marshal's wishes, may introduce. Unless consideration of these amendments should lead to a reconsideration of the entire measure in the Sejm, thereby giving the opposition an opportunity to muster its strength in that chamber, the constitution bill will undoubtedly become law in the near future, since the revisionist forces have a majority of two-thirds in the Senate.

Every prospect thus exists for terminating more than eight years of agitation by the politicians and parties allied with Marshal Pilsudski for radical changes in the legal organization of the Polish state and government. The agitation was initiated by the Marshal immediately after his *coup* of May, 1926. At that time, Parliament passed a series of constitutional statutes increasing the cabinet's budgetary powers and authorizing it to issue certain decrees with the force of law. The cabinet was also empowered to use the weapon of dissolution against the Sejm without first securing the consent of the Senate as the constitution had originally di-

<sup>1</sup> For details of the procedure, see *New York Times*, Jan. 27, 1934.

<sup>2</sup> *Ibid.*, Mar. 17, 1934.

rected.<sup>3</sup> Further than this, however, the existing parliament was not inclined to go. Nor did the succeeding parliament, elected in March, 1928, make any concessions, despite the fact that the cabinet prepared a most ambitious reform project and brought unusual pressure to bear upon the opposition deputies through the press and through its allies in Sejm and Senate.<sup>4</sup>

In the autumn of 1930, the agitation for revision entered upon a more vigorous phase. The obstreperous parliament was dissolved and new elections were held during November. In the electoral campaign, every effort was made to return senators and deputies favorable to the Marshal's cause in number sufficient to yield in each chamber the two-thirds majority necessary for revision. The Marshal himself became premier, and he and his most popular lieutenants headed the lists of the government parties throughout the country. Before the campaign was well under way, some twenty opposition deputies were seized and imprisoned in Brest-Litovsk and other fortresses. Chiefly, these represented the left-center parties, particularly the group of parties called the Centrolew which were bitterly opposed to Pilsudski. Among their number was M. Wincenty Witos, premier at the time of the *coup* of 1926, and the Silesian political leader, M. Adelbert Korfanyt.

Despite the preparations and precautions, the elections were not entirely successful from the revisionist point of view. Immense gains were made by the government *bloc* in both chambers, but only in the Senate were they sufficiently extensive to give the *bloc* its desired majority of two-thirds. In the Sejm, the *bloc* secured 247 of the 444 deputies, or 49 less than two-thirds of the total. Favorable action by that body upon any of the projects of revision which the cabinet immediately introduced had to wait, therefore, until the occasion already described when the government *bloc* used strategy to compensate for the lack of votes.

The central theme of all of the cabinet's abortive plans for constitutional change before 1934 had been the need for a stronger executive. The existing constitution, it was alleged, condemned both the president and the ministers to political impotence, the former because of his technically irresponsible position under the parliamentary system, the latter because of their dependence upon the shifting and wholly unpredictable currents of partisan bargaining and compromise in what had become the most party-ridden parliament in Europe. Instead of an instrument of government, the constitution of republican Poland, like the constitution of royal Poland before the partitions, was a charter of political anarchy.

<sup>3</sup> See the author's *Experiment with Democracy in Central Europe* (New York, 1933), pp. 193-194.

<sup>4</sup> For details of the project, see F. A. Ogg, "A Proposed New Constitution for Poland," *Current History*, April, 1929, pp. 165-166.

For the *liberum veto* vouchsafed the nobility in the historic constitution the modern constitution had simply substituted the *liberum veto* of the parties.

Loyal Pilsudskists, moreover, believed that the weak executive of the constitution of 1921 was not the creation of misguided liberals but of political opponents of their leader. They believed that the doctrinaire parliamentarism of the Third French Republic had been deliberately foisted upon Poland in 1921 by the Polish conservative and liberal bourgeois parties in the Constituent Sejm in order to provide a legislative master for the Marshal who at the time was serving as Poland's chief of state.<sup>5</sup> By means of this constitutional device, these parties had subsequently driven Pilsudski into retirement. Only the enduring loyalty of the army enabled him to restore his ascendancy in 1926 and establish *de facto* the strong government which Poland so sadly needed. For the followers of the Marshal, therefore, recognition of a strong executive in a new constitution, besides being in the highest degree expedient, would also constitute a formal apology for the wrong done the leader by the "spite" constitution of 1921, and would grant juridical recognition of his practical statesmanship since 1926.

The startling preponderance of the executive in the constitution now being proposed is thus quite understandable. This preponderance has been secured principally through radical changes in the office of president. Instead of being elected by Parliament, the future president will secure his office as a result of an electoral procedure in which Parliament is only indirectly involved.<sup>6</sup> An electoral college, or Electors' Assembly, is to be instituted consisting of 80 electors, including the marshals of the Sejm and Senate, the premier, the president of the Supreme Court, and the inspector-general of the military forces, together with 75 other citizens of merit, 50 to be chosen by the Sejm and 25 by the Senate. The college is to make a single nomination for the presidency; at the same time, the presidential incumbent is to nominate a candidate. The nation's voters are then to be called upon to decide between these two. The incumbent may, however, adopt the nominee of the college as his choice; in that case, the nominee of the college automatically becomes president, the popular vote being dispensed with.<sup>7</sup> The president will hold office for seven years.

The position of the president will differ radically from the titular status accorded him in 1921. He is to be recognized as the most exalted

<sup>5</sup> Roman Dyboski, *Poland* (London, 1933), p. 417.

<sup>6</sup> The following analysis of the proposed new constitution is based upon a translation furnished the author by the Polish Press Information Service, 385 Madison Avenue, New York City. A summary appears also in the *Bulletin* of the Polish Press Information Service for Jan. 15, 1934, pp. 5-8.

<sup>7</sup> Art. 16.

public authority in the state, superior to cabinet, parliament, the army, the courts, and the public services.<sup>8</sup> Certain prerogatives are to be accorded him in the exercise of which no ministerial counter-signature will be required, and for which he will not be accountable to any authority unless possibly the electorate. The more important of these prerogatives include the power to appoint and remove the premier, the commander-in-chief of the army, and the inspector-general of the military forces; also the power to appoint judges and other public officials, to dissolve the Sejm, to reconstitute the Senate, and to grant pardons.<sup>9</sup>

Though nominally committed to the president, it is apparently intended that the remaining executive powers shall be exercised subject to the discretion of the cabinet or the individual ministers. At any rate, the minister's countersignature is required to validate an act of the president which does not belong to the latter's prerogative powers.<sup>10</sup> It is not intended, however, that in the exercise of this discretion the ministers shall be politically responsible to Parliament; on the contrary, they are to be accountable only to the president by whom they are appointed and by whom they may be removed. The only trace of parliamentary responsibility which remains for the cabinet is the provision that the Sejm may request the president to recall the cabinet or to remove a minister. A resolution embodying such a request may be introduced only in a regular session of the Sejm and may not be voted upon until the following session. Even if it is passed at that time, the president need not grant the request, but may proceed instead to dissolve the Sejm. Should he fail either to grant the Sejm's request or to dissolve the Sejm within three days, the Senate may take up the resolution and approve it. In that case, the president must either carry out the request or else proceed to dissolve the Sejm and reconstitute the Senate.<sup>11</sup> For its temerity in suggesting a minister's removal, Parliament may thus be punished with political death.

Along with this freedom from parliamentary control, the ministers have secured many of Parliament's legislative powers. One of the most significant of these is the authority to suspend constitutional rights and to issue decrees with the force of law during a period of emergency. The decrees may affect any subject of legislation except constitutional amendments, the electoral procedure, and fiscal measures.<sup>12</sup> An even less restricted decree power exists in war-time, when constitutional amendments alone are excepted from the legislative discretion of the executive.<sup>13</sup> The proposed new constitution also states that the organization and jurisdiction of the public services are to be regulated by decrees, and Parliament is expressly denied the power to revoke decrees of this char-

<sup>8</sup> Art. 3.

<sup>11</sup> Art. 24.

<sup>9</sup> Art. 13.

<sup>12</sup> Art. 42.

<sup>10</sup> Art. 14.

<sup>13</sup> Art. 61.

acter or to amend them.<sup>14</sup> Finally, the cabinet is authorized to issue decrees appropriating funds from the national treasury in case the Sejm rejects the project of the budget. Appropriations for the respective items of expenditure made in this manner may not be greater than the disbursements for the same items under the budget of the previous year.<sup>15</sup>

Over the army and military matters generally, the new constitution proposes to establish an executive hegemony as complete as Marshal Pilsudski has ever desired. Parliament may establish maximum limits for the size of the army; but presidential orders are to determine the annual contingent to be conscripted for service. Command of the army is lodged directly in the president as supreme chief. In case he appoints a commander-in-chief, the right to dispose of the armed forces devolves upon the appointee; but the president retains the right to supervise the subordinate's official acts and to dismiss him at pleasure.<sup>16</sup> The internal government of the armed forces is to be regulated by executive decree,<sup>17</sup> and decisions affecting peace and war are to fall within the exclusive competence of the president and the ministers.<sup>18</sup>

The contemplated changes in Parliament's organization and procedure are also revolutionary. The Sejm will continue to be constituted along democratic lines. Unless sooner dissolved, its membership will be renewed every five years according to the principle of proportional representation by an electorate consisting of all men and women twenty-four years of age or over who possess full civil rights.<sup>19</sup> The Senate, on the other hand, is to be entirely reconstituted. Its legal term is to be six instead of five years as at present, and its present membership of 111 is to be increased to 120. Of this number, 40 are to be appointed by the president and the remaining 80 are to be elected by a group of electors chosen from among the more distinguished citizens of the republic in accordance with the terms of a law still to be enacted. One-half of the elected and appointed senators are to retire every three years. Special provision has been made for constituting the first Senate under the new constitution. Its entire membership is to be chosen by an electorate consisting of citizens who hold the Polish Cross of Independence, a few thousand at the maximum, and of those former soldiers, about two thousand in number, who have been awarded the decoration *Virtuti Militari*. Apparently, service in the Senate is to be the badge of a new aristocracy, since the title of senator is to be conferred not merely for the duration of the service but for life.<sup>20</sup>

The powers of the new Senate, though greater than at present, will remain inferior to those of the Sejm. Only the cabinet and the Sejm will

<sup>14</sup> Art. 44.

<sup>17</sup> Art. 44.

<sup>15</sup> Art. 45.

<sup>18</sup> Art. 12.

<sup>16</sup> Arts. 47, 48.

<sup>19</sup> Art. 28.

<sup>20</sup> Arts. 35, 36.

enjoy the privilege of initiating laws; but the Senate is to be accorded the privilege of amending or rejecting measures passed by the Sejm, its action to be regarded as definitive unless the Sejm opposes it by a majority of three-fifths.<sup>21</sup> Any measure upon which the chambers agree, or which the Sejm reenacts over the objections of the Senate by a vote of three-fifths, may be returned by the cabinet for reconsideration. Should the cabinet proceed to exercise this privilege, a measure can become law only in case both chambers can muster an absolute majority for it at a subsequent session of Parliament.<sup>22</sup>

Regular sessions of the chambers are to occur each year not later than November. The cabinet may also call special sessions of the Sejm, and upon demand of one-half of the deputies, it must call a special session within thirty days. The agenda of the special session, however, are to be limited to matters indicated in the order of convocation.<sup>23</sup> In war-time, the president, acting through the ministers, may extend sessions of the Sejm until the conclusion of peace, and convene, prorogue, and close sessions at his discretion.<sup>24</sup> The issuance of an order to dissolve the Sejm or to reconstitute the Senate, as already indicated, is to be one of the personal prerogatives of the president.

This analysis of the new constitution has proceeded far enough to make it clear that the régime which it contemplates will not differ greatly from the dictatorial governments now in existence in certain other states of Europe. Though it may not prove to be quite as vigorous as the Fascist régime in Italy, or as devoid of deliberative institutions as Chancellor Hitler's political system in Germany, it will be formidable enough. An executive authority endowed with all the prerogatives of a future Polish president is not likely to be seriously handicapped by a Sejm whose authority over the ministers has been practically nullified and whose extremely limited powers of legislation are threatened by suspensive vetoes exercised by an oligarchic Senate and by a virtually irresponsible president and cabinet. If democracy and parliamentarism are not to be quite as superfluous in the new Poland as in the new Italy or in the new Germany, they will probably be reduced to pathetic innocuity.

The new dispensation is not to be without its label. In a speech on the new constitution delivered to the Polish war veterans late in the summer of 1933, Colonel Slawek, former premier and leader of the government *bloc* in the Senate, called the guiding principle of the proposed new fundamental law "elitarism." According to Colonel Slawek, this principle demands that the public powers shall be shared by the democratic elements of the nation with the elite, those fitted for public service by special

<sup>21</sup> Art. 39.

<sup>22</sup> Art. 40.

<sup>23</sup> Art. 30.

<sup>24</sup> Art. 61.

talents.<sup>25</sup> The principle is embodied in Article 7 of the new constitution, which declares that the citizen's right to influence public affairs will be measured by the value of his efforts in the service of the community. It has found its most characteristic expression in the method by which the president is to be selected, in his exalted constitutional position, and in the method by which the Senate is to be constituted. "Elitarism" is thus about to take its place, along with Russian Communism, Italian Fascism, German National Socialism, and Austrian Christian Patriotism, in the lexicon of Europe's contemporary authoritarian political experiments.

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<sup>25</sup> Extracts from the speech appear in the *Bulletin* of the Polish Press Information Service for September 15, 1933, p. 73.

NEWS AND NOTES  
PERSONAL AND MISCELLANEOUS  
*Compiled by the Managing Editor*

The headquarters for the 1934 meeting of the American Political Science Association will be at the Hotel Sherman, Chicago. The meeting will open on Wednesday evening, December 26 (instead of December 27 as previously announced), with a joint session of the American Economic, Statistical, and Political Science Associations and American Sociological Society, and will close with a luncheon session on Saturday, December 29. Aside from three general luncheon and evening sessions, and the annual business meeting of the Association on Friday afternoon, the program is to consist of a series of some twenty round table conferences, conducted on a wholly informal basis without set speeches or written papers, on topics related primarily to the impact of the depression and the recovery program upon American political institutions and processes. In order to insure informality of discussion, the participating membership of each conference group is to be seated around a table and limited to a maximum of fifteen persons, selected partly by invitation of the chairman and partly from those who apply for admission to the chairman in advance of the meeting. Those who desire to attend in excess of this number may do so as auditors, and for them chairs will be provided elsewhere in the room. The names of the round table chairmen and further details relative to the program will be announced in the October issue of the REVIEW. As announced previously, the chairman of the program committee is Professor Walter R. Sharp, University of Wisconsin.

Mr. W. A. Rudlin, of the London School of Economics and Political Science, will teach political science at Amherst College during the coming academic year.

Ex-Secretary Henry L. Stimson delivered four lectures at Princeton University, beginning April 9, on the Stafford Little Foundation. The lectures dealt with various aspects of the world situation.

Mr. Walter Lippmann gave the annual Godkin lectures at Harvard University during the period May 15-18 on the subject of "The Method of Freedom."

During the spring quarter, Professor Frederick L. Schuman delivered a series of four lectures at the University of Chicago on "The New Germany."

Professor John B. Whitton will be on leave of absence from Princeton University during the first half of the next academic year and Professor William S. Carpenter during the second half.

Professor Harvey Walker acted as director of a short course on police administration held at Ohio State University from March 19 to 24. Forty-two students, representing four states, were registered.

Professor William Y. Elliott will be on leave of absence from Harvard University during the first half of the next academic year and Professor Arthur N. Holcombe during the second half.

Under the auspices of the Soviet Institute of Public Law, Professor Harold J. Laski, of the London School of Economics and Political Science, has been lecturing in Russia on problems of representative government.

Professor Rufus D. Smith, dean of Washington Square College, New York University, has been appointed to the newly created office of provost and has been succeeded as dean by Professor Milton E. Loomis.

Professor Tyler Dennett, of Princeton University, has been elected president of Williams College, of which institution he is an alumnus. By interesting coincidence, his predecessor, Dr. Harry A. Garfield, also went from a professorship in the department of politics at Princeton to the presidency of Williams.

From second deputy to the late Controller W. Arthur Cunningham of New York City, Professor Joseph D. McGoldrick, of Columbia University, was recently advanced by Mayor LaGuardia to the controllership.

After the Senate Committee on Commerce refused, in May, to report favorably the name of Professor Willard V. Thorp for director of the Bureau of Foreign and Domestic Commerce, President Roosevelt designated Dr. John Dickinson, assistant secretary of commerce, to act as director of the bureau until other arrangements could be made.

At the University of Michigan, Dr. James K. Pollock has been advanced to a full professorship of political science, and Dr. Lawrence Preuss to an assistant professorship.

Professor Charles G. Haines, of the University of California at Los Angeles, has been elected a member of the Institut International de Philosophie du Droit et de Sociologie Juridique. Other American members are Roscoe Pound, Albert Kocourek, Karl Llewellyn, and John Dickinson.

Professor Edward S. Corwin, of Princeton University, gave the lectures on the Storrs Foundation at the Yale Law School on April 9-12. His subject was "National Power in Constitutional Theory, *à propos* N.I.R.A." The lectures, four in number, will be published in a somewhat revised form by the Yale University Press.

Professor W. Leon Godshall has been granted leave of absence from Union College for the academic year 1934-35.

Professor J. A. C. Grant, of the University of California at Los Angeles, will be in Europe during the summer and autumn.

Dr. John B. Mason, formerly an instructor in political science at the University of Arkansas, has been appointed professor of history at the Colorado Women's College, Denver.

Professor N. D. Houghton, of the University of Arizona, is giving courses on political parties and international relations in the summer session of the University of Missouri.

After spending the past academic year as visiting professor at the University of Chicago, Professor John M. Gaus is returning to his regular position at the University of Wisconsin. Professor Edwin E. Witte, who since retiring a year ago as chief of the Wisconsin Legislative Reference Library has held a professorship of economics at Wisconsin, will, beginning in September, give part of his time to the political science department and will be in charge of courses on legislation and state administration.

Mr. Paul V. Betters, executive director of the United States Conference of Mayors and the American Municipal Association, served as adviser to the federal civil works administrator during administration of the federal C.W.A. program, but has now returned to Chicago to resume his regular duties with the Conference and the Association.

Professor Peter H. Odegard, of Ohio State University, is serving as acting professor of political science at Stanford University during both spring and summer quarters.

Professor Edwin A. Cottrell is taking a partial sabbatical from Stanford University during the spring and summer quarters and is remaining on the Pacific Coast during the time. Professor Graham H. Stuart was acting head of the political science department during the spring, and Professor Hugh McD. Clokie is serving during the summer.

During the spring quarter, Mr. Chester H. Rowell, editor of the *San Francisco Chronicle*, delivered weekly lectures at Stanford University on current politics, under the auspices of the department of political science.

Professor Graham H. Stuart, of Stanford University, leaves in June for nine months in Europe, where he will visit representative legations and consulates in connection with a study of diplomatic and consular procedure. He will deliver a series of lectures at the Academy of International Law at The Hague during the summer and in the fall will lecture at the Carnegie European Center in Paris.

Dr. Herbert Wright, professor of international law at the Catholic University of America, has been elected president of the Catholic Association for International Peace.

Professor C. I. Winslow, of Goucher College, spent a portion of the past academic year in England, where he carried on a study of parliamentary procedure.

Mr. Lee S. Greene, who spent the past academic year in Washington as a Wisconsin-Brookings fellow in political science, has been made instructor in the Extension Division of the University of Wisconsin.

Dr. Rodney L. Mott, formerly of the University of Chicago and more recently research consultant of the American Legislators' Association, has been made director of the school of social science at Colgate University, organized in accordance with the new "Colgate plan." The school includes the departments of history and politics, economics and sociology, and education. Dr. Mott will also conduct courses in political science.

Professor Marshall E. Dimock returned to the University of Chicago in early spring from a three month's survey of activities in the Panama Canal Zone, later giving a series of six lectures on government-operated enterprises in the Zone. He has been appointed secretary of the department of political science in succession to Professor Leonard D. White. Professor White, whose tenure as a member of the United States Civil Service Commission is of indeterminate duration, has been granted an extended leave of absence by the University.

Through the efforts largely of Professor Morris L. Lambie, of the University of Minnesota, and Mr. George E. Harrold, city planning engineer of St. Paul, a state planning board of seventeen members was organized in Minnesota during the spring.

President H. Y. Benedict, of the University of Texas, has announced the establishment of a bureau of municipal research, to be operated in connection with the department of government in the University. Dr. Roscoe C. Martin, associate professor of government, has been named director.

A 200-page guide to the "Emergency Agencies and Facilities" of the New Deal has been compiled by the National Emergency Council. The manual is in question and answer form and includes charts showing the relationships of the various agencies. It may be secured by writing to the National Emergency Council, Washington, D.C.

The fifteenth annual meeting of the Southwestern Social Science Association was held at Dallas, Texas, on March 30-31. A very full program was presented, organized in sessions on agricultural economics, govern-

ment, history, human geography, business administration, and sociology. The program was prepared by a committee under the chairmanship of Professor F. H. Buechel, of the University of Texas.

The first of a series of conferences on government to be held under the auspices of the Arnold Foundation at Southern Methodist University, Dallas, Texas, took place on March 2-3. Five sessions were devoted to varied groups of papers, most of them dealing with aspects of constitutional revision, legislation, administration, justice, elections, and local government in Texas.

Under the auspices of the Sub-Committee on Political Education of the American Political Science Association, a conference on the coördination of law-enforcement machinery in New Hampshire was held at Dartmouth College on May 18-19. The conference consisted of some thirty judges, lawyers, law-enforcement officers, and professors of political science, with Professor Harold R. Bruce as director.

At the fourth Institute of Foreign Affairs, held at Earlham College on May 17-19, round tables on Far Eastern and Latin American topics were conducted by Mr. Grover Clark of New York City and Professor Dana G. Munro of Princeton University. Lectures were given by both of these men and by Mr. George A. Finch, managing editor of the *American Journal of International Law*.

The third summer institute for teachers of international law will be held at the University of Michigan from June 27 to July 31. Admission is by invitation only. Courses are to be offered by Professor Jesse S. Reeves, who is acting as dean of the session, by Dr. James Brown Scott, who is chairman of the institute, by Professors George Grafton Wilson and Charles Cheney Hyde, and by Mr. George A. Finch.

Round tables at the eighth Institute of Public Affairs, to be held at the University of Virginia July 2 to 14, include one on county government and state planning, another on current conflicts in the Far East, and a third on management versus regulation in government, led by Professors George W. Spicer of the University of Virginia, Grover Clark of Columbia University, and Thomas H. Reed of the University of Michigan, respectively.

Plans for establishing an Institute of Urbanism at Columbia University to aid "in that vast reorganization and rebuilding of New York City which is believed to be inevitable" were announced in April. Modeled on the *Institut d'Urbanisme* of the University of Paris, the Institute would have as its purpose to carry on researches relating to the immediate problems of the city, such as administrative reorganization, economic and social development, and the physical facilities for urban life.

The George Washington University has announced the establishment of a Center of Inter-American Studies, to be administered by a council including Dr. James Brown Scott, of the Carnegie Endowment for International Peace, Dr. Leo S. Rowe, director-general of the Pan-American Union, and eight other persons specially qualified to advise and coöperate. The activities of the Center will include courses of instruction, special lectures, publication, research, professorial and student exchanges, radio broadcasts; and the general director will be Dr. A. Curtis Wilgus, associate professor of Hispanic American history in the University.

Under the auspices of the American Council of Learned Societies, the Committee on International Relations of the University of California, and International House at the same university, a summer seminar on Far Eastern studies, designed for mature scholars, will be held at Berkeley from June 25 to August 3. The emphasis will be upon Oriental cultural backgrounds rather than on current social and political situations. A similar seminar was held at Harvard University during the summer of 1932.

The lecture program for the coming summer session at Ohio State University will consist of a course of twelve talks on various aspects of the New Deal. Graduate students who wish to take the course for credit will be required to follow a reading syllabus and attend a weekly seminar led by the lecturers for the week. During the course, lectures will be delivered by Dean Walter J. Shepard on the philosophy of the New Deal, by Dr. H. Schuyler Foster on international aspects of the New Deal, and by Professor Harvey Walker on the program of the New Deal. Dr. Walker is chairman of the Summer Session lecture committee which is in charge of arrangements for the course.

The Graduate School of the American University announces the launching of a new series of publications under the immediate sponsorship of the Cumulative Digest of International Law and Relations. A board of editors has been established under the directorship of Professor Ellery C. Stowell, and the first volume to be issued—Dr. Catheryn Seckler-Hudson's *Statelessness; With Special Reference to the United States*—has come from the Digest Press. This volume will be reviewed in an early number of the REVIEW.

The Sub-Committee on Publications of the Committee on Policy held a meeting at Columbus, Ohio, on April 21. Dean Walter J. Shepard, president of the Association, and Professor Frederic A. Ogg, managing editor of the REVIEW, were also in attendance, and the committee devoted most of its time to a discussion of problems and policies pertaining to the REVIEW as presented for consideration by the managing editor.

It dealt in some detail with the preferable types of general articles, the proper apportionment of space between interpretative articles and the periodic summaries of constitutional, political, and administrative changes, and the arrangement of book reviews and notices. The sub-committee has in mind no proposals for important changes in the form and content of the REVIEW; but it is to consider the matter further and will welcome suggestions from members of the Association, who may send their comments to any member of the sub-committee, i.e., Professors B. A. Arneson of Ohio Wesleyan University, F. G. Crawford of Syracuse, and F. W. Coker of Yale.—F. W. COKER.

Beginning this year, the Institute of Justice formerly held at the University of Chattanooga is converted into an institute for discussion of aims, objectives, and methods of social and economic planning as exemplified by the Tennessee Valley Authority. At a session of the Institute held during the week of April 23, prominent speakers were brought together from various parts of the United States, and round tables were conducted by (among others) Professor Howard W. Odum of the University of North Carolina, Professor Ray B. Westerfield of Yale University, and Dean William Mikell of the University of Pennsylvania.

A second regional conference to consider the problem of uniform regulations for buses and trucks will be held at Salt Lake City, June 25–27. Like the Interstate Bus and Truck Conference held at Harrisburg, Pennsylvania, in October, 1933, the coming meeting is being organized at the request of a state legislature. During a special session last summer, the Utah legislature adopted a resolution calling a conference of eleven western states and requesting the American Legislators' Association to organize it. Resolutions endorsing the calling of the conference were adopted by several of the state legislatures in that region, and by the Western Conference of Governors at its meeting in Boise, Idaho, November 28, 1933. The importance of the subject to be considered can be measured by the attendance of scores of state legislators and public officials from seventeen northeastern states at Harrisburg. It is expected that official delegates—members of legislatures, motor vehicle and highway commissioners, public utility commissioners, and others—from all of the far western states will attend the Salt Lake conference.

The third annual Mid-West Institute of International Relations, arranged by the American Friends Service Committee, will be held at Northwestern University from June 25 to July 6. A twelve-day course of lectures and round tables is announced as designed especially for "public and private school teachers, ministers, field and local peace workers, college students, and others interested in promoting world peace." Among lecturers and leaders will be President W. C. Dennis of Earlham College,

Professors Grayson L. Kirk of the University of Wisconsin, Quincy Wright of the University of Chicago, and Charles E. Chapman of the University of California, Messrs. Kirby Page, Clark M. Eichelberger, Grover Clark, and Miss Dorothy Detzer. Applications for membership are to be sent to Room 901, 203 S. Dearborn St., Chicago.

Professor Albert Russell Ellingwood, of Northwestern University, died at Evanston on May 13 after an illness of three months. Born in Iowa, Professor Ellingwood was graduated from Colorado College in 1910, later receiving the degrees of B.C.L. from Oxford and Ph.D. from the University of Pennsylvania. After teaching at Colorado College and at Lake Forest College, he joined the faculty of Northwestern University in 1926, attaining a full professorship in 1930 and in 1932 becoming assistant dean of the College of Liberal Arts. His published works include *Departmental Coöperation in State Government* (1918), and, with Whitney Coombe, *Government and Labor* (1926) and *Government and Railroad Transportation* (1929). At the time of his death he was compiling a bibliography of American constitutional law.

An American committee for coöperation with the International Union of Local Authorities at Brussels has recently been established with headquarters at the American Municipal Association in Chicago. Represented on the committee are the American Municipal Association, Public Administration Clearing House, International City Managers' Association, Municipal Finance Officers' Association, American Legislators' Association, Institute of Public Administration, National Municipal League, Bureau of Public Administration of the University of California, and the United States Conference of Mayors. The committee is developing plans for representation of the United States at the General Assembly of the International Union to be held at Lyons, France, from July 19 to 22. One of the two subjects on the agenda for the Lyons conference is teaching and research in local government and administration. Information concerning the meeting may be obtained from the secretary of the American committee, Mr. Paul V. Betters, at Drexel Avenue and 58th Street, Chicago.

The Social Science Research Council has announced the award of 46 grants-in-aid of research, 14 new fellowship appointments, and one fellowship reappointment for a period of one year. The grants-in-aid total \$22,175; the fellowships, over \$48,000. No fellowships were awarded this year to political scientists, but recipients of grants-in-aid include Professors Kenneth Colegrove, Oscar Jászi, Harvey Walker, Francis G. Wilson, and Harold H. Sprout. A grant was made also to Professor Ellingwood, of Northwestern University, whose death is recorded elsewhere in this number of the REVIEW. The Council desires to call attention to two

new series of training fellowships in the social sciences, which will be offered for the first time for 1935-36. One of the new series will be known as "pre-doctoral fellowships for graduate study," and will be open to persons not over 25 years of age, who shall not have been enrolled in any graduate school for more than one semester before July 1, 1935. The purpose of these fellowships is to aid exceptionally promising students of the social sciences to obtain research training beginning with the first year of graduate study. The other new series will be known as "pre-doctoral field fellowships," and will be open to persons not over 27 years of age who are candidates for the Ph.D. degree, and who shall have completed, prior to the end of the academic year 1934-35, all courses and examinations for which they are eligible before completion of the thesis. The purpose of these field fellowships is to supplement formal graduate study by opportunities for field work which will assure first-hand familiarity with the data of social science in the making. The "post-doctoral training fellowships" will again be offered, under policies and regulations similar to those previously in effect. The closing date for the receipt of applications for grants-in-aid for the academic year 1935-36 will be January 15, 1935; for pre-doctoral field fellowships and post-doctoral training fellowships, December 1, 1934; for pre-doctoral fellowships for graduate study, December 15, 1934. All applications and communications are to be addressed to the Secretary for Fellowships and Grants-in-Aid, 230 Park Avenue, New York City.

**A Laboratory of Public Affairs.** To supplement theoretical and classroom study of government and politics with actual training in the practical operations of government, the National Institution of Public Affairs has been established at Washington for the preparation of a selective group of college juniors, seniors, and young graduates for service and leadership in public affairs. Self-governing, privately financed, non-partisan, and non-political, but enjoying the coöperation of the National Administration, this "laboratory of public affairs" will appoint its students upon a plan similar to the selection of Rhodes scholars. Basic qualifications which students must have for selection by the Institution's committees will include, in addition to high scholastic standing and an active interest in the fields of politics and government, those qualities of character and ability which are so important to the elusive characteristics comprising the dynamics of leadership. Designed not to compete with existing educational facilities, but to augment academic study, the Institution will afford a knowledge of and a training in the practical functions, organizations, procedure, and methods of the federal government. Included in its laboratory program will be lectures by government officials; forums for discussion, debate, and analysis; observation of and assignment to

actual government work and duties; special case problem work; and the writing of a report or thesis. In the students' application to actual governmental work, which will come as the last part of the program of study, it is planned that each student will be assigned as an "interne" to some branch of the government, probably the one that interests him most. For a period of several days, he will get this actual experience, coming to work and continuing through the day as if he were permanently employed. His assignment would be as an assistant to an official in the higher brackets of governmental positions. At the conclusion of this assignment, the student will devote his last week of the Washington program to a special governmental problem, function, or department.

This program of the National Institution, restricted as it will be to a comparatively small number of students each year, will not directly affect large numbers of American college students. In a supplementary activity, however, the Institution is stimulating the development of "public affairs forums" at each of the six hundred colleges and universities throughout the country. As well as is possible at a distance from the seat of government, these forums will study the practical operation of the federal government and concrete aspects of public affairs, and members will be encouraged to engage in the campaigns of their own political parties. These campus clearing-houses of practical public affairs will thus serve as preparation both for a tour of study in Washington and for a later interest and activity in politics and government. The agenda of these forums will not be confined to the federal government and national affairs, but will also include the consideration of current problems and a study of and active participation in local government and politics in the communities close to the colleges and universities. The National Institution of Public Affairs constitutes the first fundamental step in a conscious, objective program for the training of public leaders to replace the hit-and-miss, haphazard methods which have prevailed in the past. Further information may be obtained by addressing the Institution at 1001 Fifteenth St., Washington.—OTIS T. WINGO, *Executive Secretary*.

## BOOK REVIEWS AND NOTICES

*The Idea of National Interest; An Analytical Study in American Foreign Policy.* By CHARLES A. BEARD, with the collaboration of G. H. E. Smith. (New York: The Macmillan Company. 1934. Pp. ix, 583.)

This volume, bearing the sub-title "An Analytical Study in American Foreign Policy," and called by the author a matter-of-fact inquiry into the meaning and use of the formula, is to be followed by another in which "an effort will be made to construct a consistent and tenable philosophy of national interest." In justice to the author, criticism of the present work should be made with the whole plan in mind. The reader unconsciously looks for a philosophy, or at least a philosophical theory, to guide him through the mass of facts which have been here collected. Not finding it, there is a sense of blurring, a lack of that orderly and logical unfolding of exposition which one naturally looks for in the writings of an investigator so competent and of a writer so skilled as is Mr. Beard. This aside, there are other shortcomings of the book. It is quite unnecessarily repetitious, and it certainly lacks balance and perspective. One feels that the entire matter has not passed through the alembic of one man's mind so as to give a sense of unity and of orderly development. The author makes due acknowledgement to his assistants and assumes responsibilities for the shortcomings of the book as well as for the opinions expressed. Such avowals, however, do not necessarily make a satisfactory product. Surely "national interest" (whatever that term may mean) ought to find expression in the treaties to which the United States has been a party since 1778. Aside from those which have resulted in territorial expansion, treaties are but rarely touched upon. Even the Monroe Doctrine is but incidentally discussed and principally with reference to Mr. Hughes's interpretations of it. Notwithstanding the emphasis upon the economic factors involved in national interest, the commercial treaties do not appear to warrant much, if any, consideration. After all, national interest as secured by diplomacy involves an adjustment with the national interests of other states.

There are the old antinomies to start with: Hamilton, commerce and industry, Republicanism and *machtpolitik*—Jefferson, agrarianism, the Democratic party. Mr. Beard's explorations of the subject give "two fundamental relevancies" in the field of national interest—territory and commerce. The study is therefore largely limited to these two factors. As to the first, continental expansion was motivated by the desires of the agrarian interests for land to be held by free farmers or exploited by slave labor, while overseas expansion was essentially a commercial expansion. The first was antebellum and Democratic, the second Whig and Republican. Remembering the circumstances leading to the signing of the

Louisiana treaty, it strikes one as surprising that the Louisiana purchase should be set up as the first great demonstration of the policy of expansion to obtain land for farms (p. 54). In connection with overseas expansion, one is certainly entitled to some definite authority for the statement that Roosevelt "came to a *secret* understanding with Japan and Great Britain to preserve the *status quo* in the division of spoils in the Far East (p. 105)." Developing the concept of national interest in foreign commerce, there is introduced an essay upon the American stake abroad (Chapters VII-VIII) in which is clearly portrayed the shifting situation of American investments abroad down to 1932. That the concept of national interest is not wholly economic is seen in Chapter X, in which is discussed moral obligation in national interest. Yet its economic influences are clear: "Moral obligation as employed in American foreign policy is . . . secular and utilitarian (p. 388)," and is good for domestic consumption.

Since the crash the possibility of both Hamiltonian and Jeffersonian concepts have been challenged by stubborn facts. Mr. Beard states that these two inherited conceptions of national interest are in process of fusion and dissolution. His concluding sentence is arresting: "A new conception, with a positive core and nebulous implications, is rising out of the past and is awaiting formulation at the hands of a statesman as competent and powerful as Hamilton or Jefferson."

The volume is stimulating and provocative. The inductive method of arriving at a concept of national interest, even if limited to the two major relevancies, seems not to afford a clear-cut objective definition. A national interest would appear to be something which has been adopted by the government as a national interest. It is the attitude which determines, not the content, as was shown by the Senate's reservation on advisory opinions by the World Court. There are no theoretical limitations to a "claim" of national interest. The successful recognition of such a claim is, fortunately, not wholly a matter of national policy.

JESSE S. REEVES.

*University of Michigan.*

*The Mainstay of American Individualism; A Survey of the Farm Question.*  
By CASSIUS M. CLAY. (New York: The Macmillan Company. 1934.  
Pp. xiii, 269).

*The Menace of Recovery; What the New Deal Means.* By WILLIAM MACDONALD. (New York: The Macmillan Company. 1934. Pp. ix, 401.)

*America Goes Socialistic; An Interpretation of Our Governmental Drift.* By HENRY SAVAGE, JR. (Philadelphia: Dorrance and Company, Inc. 1934.  
Pp. 146.)

The author of *The Mainstay of American Individualism; A Survey of the Farm Question* is a lawyer with a farm background. His book was written in large part, he tells us, before the existing agricultural experiments were afoot. He views the problem as a century-old one. His analysis leads him to the conclusion that creditors must share in writing down farm mortgages, that governmental costs must be scaled down, that there should be a more equitable distribution of the tax burden, that freight and public utility rates should come down, and that tariffs should be lowered. He is not for "the maintenance of prices through restriction of production or control over sources." Such plans, together with "resistance to the scaling down of fixed charges, to governmental economy, and to the reorganization of inflated capital structures" only "delay the reopening of the normal channels of trade."

Mr. MacDonald finds "the menace of recovery" in "the underlying assumption" that "social wisdom is the possession of the federal government, and that neither individuals, nor social groups, nor states, nor municipalities can be expected to act wisely and efficiently if left to themselves." The menace is in the marshalling and disciplining of the American people by federal agents, coercing them by federal authority, and penalizing them "by the President or the courts if they hesitate or disobey." The result, he feels, is a rapid march to a complete socialist order. The author makes an informative survey of the course of events from the days of the New Deal campaign to the fruition of plans into "the reorganization of American society on collectivist lines, with the federal government as the central source of authority and federal power as the directing and compelling source."

Mr. Savage, a member of the South Carolina bar, surveys the origin and growth of constitutions and of *laissez faire*, the "federal metamorphosis," the course of state governments and of our "omni-governing municipalities." He follows in factual detail the trend of governmental restrictions and activities, and concludes that "the social, political, and economic drift in America is, and for the past twenty-five years has been, clearly in the direction of socialism." He finds this trend in the growing burden of taxes, in the character of those taxes, in reducing the wealthy, and in the many public activities that "elevate the less favorably situated classes towards the social mean." He compares the Socialist platform of 1932 with the legislative and administrative programs adopted recently, and concludes that "there is scarcely a point in the [Socialist] platform which we are not working towards."

The fundamental query common to all three of these books is the extent to which collectivist tendencies should be suppressed. To the reviewer, certain social forces must be recognized as fundamental to this question. The first is that our economic order is not regimented by state lines, and

hence the national approach is the only effective one. The second is that folkways change but slowly and traditions die hard. American folkways and traditions emulate the individual. The path to economic stability lies, therefore, in the national guidance of economic shifts with the greatest possible freedom to the individual consistent with that guidance.

CLYDE L. KING.

*University of Pennsylvania.*

*Labor Under the N.R.A.* BY CARROLL R. DAUGHERTY. (Boston and New York: Houghton Mifflin Company. 1934. Pp. 37.)

*Labor and the New Deal.* BY EMANUEL STEIN, CARL RAUSHENBUSH, AND LOIS MACDONALD. (New York: F. S. Crofts and Company. 1934. Pp. 95.)

On the whole, our legislatures, both federal and state, have passed comparatively little labor legislation. In most industrial countries, the rights of labor have been defined by legislative enactment, but with us such definition has been largely the work of the courts. And such legislation as has here been enacted affecting substantive rights of employer and employee has either been construed narrowly or held defective on constitutional grounds. Also in this country we have been comparatively slow in developing a labor movement, and with us labor organizations affect relatively small numbers of workers. These considerations make the National Industrial Recovery Act a most extraordinary piece of labor legislation. It provides for the first time a uniform body of labor legislation and affords incentive and encouragement to the formation and enlargement of labor organizations.

What this legislation has done for labor in providing a greater degree of economic well-being and security is the general subject discussed by Mr. Daugherty. Has N.R.A. made more jobs, reduced the work-day, eliminated sweatshop conditions, helped unions organize non-union workers, lessened the extent of industrial conflict, effected any change in employers' attitudes and tactics, produced any difference in court decisions? These are among the alluring questions posed. Unfortunately, as Mr. Daugherty himself says, no definite conclusions can now be drawn as to most of these questions. This is true even today, and more so when Mr. Daugherty was writing in the latter months of 1933. Such data as Mr. Daugherty has been able to assemble from so brief an experience do show that the economic well-being of labor has been definitely advanced under N.R.A. But there is little evidence of any revolutionary change in the attitude of employers toward the employer-employee relationship.

That labor's right to bargain collectively is not assured under N.R.A. is indicated by the fact that Senator Wagner has recently felt it necessary

to introduce his labor disputes bill; that labor is not sufficiently secure in its employment under the Act is shown by the introduction of a bill to encourage the nation-wide enactment of state unemployment-insurance laws. The passage of these bills seems, at this writing, doubtful.

As to the attitude of the courts, there is as yet little or no basis for a conclusion. Stein, Raushenbush, and MacDonald do not undertake to reach any decision on this question, but they have collected useful Supreme Court opinions dealing with protective labor legislation, collective bargaining, etc. The authors point out that many of the principles incorporated in the N.R.A. have been declared unconstitutional. No opinion is ventured as to what the present Court will do further than to say that if the judges relax constitutional restrictions, "it will be the end of judicial supremacy upon such questions. In case the courts do not relax their control, it may be the end of the Constitution as we have known it." In the light of these observations, one may conclude that whatever attitude the Court may take toward the labor legislation embodied in N.R.A., judicial review of it will be of diminishing importance.

ALPHEUS T. MASON.

*Princeton University.*

*The Economy of Abundance.* BY STUART CHASE. (New York: The Macmillan Company. 1934. Pp. 327.)

With government and economics linked together under the New Deal, this volume is of direct interest to political scientists. In it, Mr. Chase surveys the change from a handicraft to a high-energy culture, capable of producing an abundance of goods under a rational order. While he suggests desirable improvements in the existing capitalist economy, he offers no comprehensive and clear-cut program for effecting the transformation.

Analyzing our social changes in detail, Mr. Chase treats of the effects of technology on labor. Modern equipment is displacing farmers and industrial workers by the thousands, forcing them to seek relief in service trades. Labor is losing ground, while technicians and other white-collar employees generally are gaining ground. The Marxian doctrine of proletarian dictatorship, then, is not readily applicable to high-energy civilizations where the proletariat tends to disappear. On the capital side, according to Mr. Chase, technological progress has been accompanied by a tremendous rise in the debt burden. Too large a share of our income has gone into the capital goods sector, and too little into consumer's goods. By expanding plant capacity far beyond current needs, capitalism has undermined its own prosperity. Carrying on the theme of his *Tragedy of Waste*, Mr. Chase stresses the fact that saleability, rather than serviceability, is the guiding motive of modern capitalism.

Inevitably, technology has affected governments. It has thrown many new burdens on the state, and has made our historic system of local autonomy obsolete. A shortage of markets abroad and the struggle for raw materials spell war and economic nationalism. To meet the changed conditions, governments must be reconstructed. Mr. Chase suggests the transfer of political power to great regional units, each directed by a staff of experts. Democracy would have as its sphere only those problems that do not involve economics. Public works would be financed by non-interest-bearing federal loans or by outright gifts. Further adjustments of credit will come from government ownership of the banking business, government printing of money, and a reduction of interest rates to practically zero. While personal property would be left largely in private hands, major industries will be rigidly controlled, or taken over by the government. Great masses of people are to receive public support, their labor being unnecessary under high-energy conditions. Checks and balances are to be largely discarded. On the whole, Mr. Chase favors governmental expansion, for retrenchment would reduce the income of officials and thereby cut their purchasing power. To clear the track for the above program, a national constitutional convention is proposed. Economic nationalism may yield to internationalism, while the mounting horrors of mechanized fighting may foster the abolition of war.

Only a tenth of the volume touches government, and even then the treatment is sketchy, for Mr. Chase frankly leaves such matters to "politicians and sociologists." As for the remainder of the text, a good deal of space is devoted to matters familiar to the readers of this magazine, such as farm life in 1760 and the story of invention. The volume is written in a popular style, with extensive use of citations from others, and with Mr. Chase's usual sprinkling of important tables as evidence of his accounting background.

WILLIAM BEARD,

*California Institute of Technology.*

*The Choice Before Us; Mankind at the Crossroads.* BY NORMAN THOMAS.  
(New York: The Macmillan Company. 1934. Pp. viii, 249.)

This work is Norman Thomas at a new level of analysis, commentary, constructive suggestion, and prophecy. The author has grown in his understanding and appreciation of the problems with which he deals and in his power to clarify the issues of our generation. He writes with conviction, but also with restraint and a sense of responsibility that is frequently absent in the work of social and political reformers.

Mr. Thomas analyzes the troubles which beset the world of today, vividly depicting the unrest and anxious bewilderment with which the

average man looks upon the breakup of the old order and the passing of many things which once were classed among the "eternal verities." But "we are not destined either to salvation or destruction regardless of what we may do ourselves"; it is important "to see what choices are possible and how these choices may be made effective."

There follows a chapter on "What is Worth Saving?", in which the reformers are reminded that they will make grievous mistakes if they think there is no "fresh strength in the old virtues of liberty and tolerance," or if they think "the individual will be satisfied to have any state or commonwealth become forever his mind and his conscience"; also a chapter on "The Rise of Fascism," which he brands as "the last stage of capitalism, a capitalism upon which Adam Smith would look with horrified wonder," "the evilist spawn of capitalism and nationalism, of the acquisitive society and war."

The chapter on "Socialism and Communism" generously rejoices in the achievements of Soviet Russia and is a candid and realistic consideration of the desirability of establishing a United Front, a result which, in a supplementary note inserted in the book after printing, Mr. Thomas reluctantly admits is not hastened by such incidents as the Madison Square Garden episode.

Mr. Thomas views the New Deal as a program of state capitalism and likewise of economic nationalism, both of which he considers fraught with disaster to the workers. His treatment of "Social Forces in America" and "The Road Before Us" is an effort at appraisal with a view to presenting in the last chapter the chances for the choice he would have America make, viz., to build "The Coöperative Commonwealth." In this part of the book he examines the practical steps by which the socialist program must proceed if it is to capture the support of the workers, farmers, and engineers who are essential to the era of "shared abundance." Here also he frankly states the case for constitutional revision and some of the terms thereof; yet, though confirming Mr. Thomas in his leadership of the effort to find indigenous rootage for socialism in America, it leaves many serious questions of governmental and constitutional change uncovered.

RUSSELL M. STORY.

*Pomona College.*

*The Hour of Decision.* BY OSWALD SPENGLER. Translated by Charles Francis Atkinson. (New York: Alfred A. Knopf. 1934. Pp. xxi, 230; index, xiii.)

What the famous author of *The Decline of the West* had in mind in writing this book, which bears the sub-title "Part One: Germany and

"World-Historical Evolution," may perhaps best be indicated by a quotation which suggests both his problem and the broad sweep of his ideas: "The stupendous dynamism of the historical epoch that has now dawned makes it the grandest, not only in the Faustian civilization of Western Europe, but—for that very reason—in all history, greater and by far more terrible than the ages of Caesar and Napoleon. Yet how blind are the human beings over whom this mighty destiny is surging, whirling them in confusion, exalting them, destroying them!"

With a forceful array of ideas, Spengler tells what is happening to this age; but, although he interprets movements and events, he refrains from forming judgments and final conclusions. Clearly he is writing for the enlightenment of his own country, "to whom the storm of facts is more menacing than to any other country, and whose existence is, in the most alarming sense of the word, at stake." And while he detested "the sordid Revolution of 1918 from its first day" because "it was the betrayal by the inferior part of our people of that strong, live part which had risen up in 1914 in the belief that it could and would have a future," he by no means accepts the present régime with its "short-sightedness and noisy superficiality" as the way to salvation. Its foreign policy is its chief weakness, for "Germany is not an island. No other country is in the same degree woven actively or passively into the world's destiny."

But while the author obviously has Germany in mind, the work is not primarily an exposition of German problems, but of world problems. In fact, it may best be briefly described as a further elaboration of his *Decline of the West*. After briefly scanning the world's political horizon, he develops his thought under three main heads. Under the first, he shows that this age of world wars has destroyed the democratic forms of the Great Powers. In the second section, which occupies more than half of the volume, he describes in detail "The White World-Revolution," now at its goal but still unfinished; and behind this proletarian revolution "there looms the greatest of all dangers," which he discusses under the heading of "The Colored World-Revolution." Western civilization is, therefore, threatened, not by one, but by two, revolutions of major dimensions. "The one comes from below, the other from without: class war and race war." The "colored revolution" which has just begun will put an end to white civilization unless some mighty Caesar saves it, for parliamentary forms of government are done for. We are at the end of an epoch, and "he whose sword compels victory here will be lord of the world." The hour of decision is at hand.

The translator has succeeded fairly well in reproducing the mood and style of the author, although the numerous italicised words and phrases, sprinkled on nearly every page, do not always convey the force of the original. The most literal translation is not always the most exact. But

this is a minor point. The book is one of the most stimulating and thoughtful works on world tendencies that has appeared in recent years.

KARL F. GEISER.

*Oberlin College.*

*The New Party Politics.* BY ARTHUR N. HOLCOMBE. (New York: W. W. Norton Company. 1933. Pp. vii, 148.)

It is almost a decade since Professor Holcombe, in *The Political Parties of Today*, shed new light upon the character of American parties as combinations of sectional interest-groups, and upon their history, which has been affected fundamentally by the shifting of sectional alliances. He now carries us into the future. He is concerned with a revolution, the growing ascendancy of urban as against rural population, and hence with the possibility of our travelling the road of Moscow or of Rome. Formerly, American politics was rural and sectional; in the future it will be more and more urban and class-conscious.

In the new era, we must analyze class interests as we used to analyze sectional interests. What are the chief classes of an urban community? Not the least interesting passages of this little book present the conflicting views of the Russian Bucharin and the German Geiger, and seek to show their application to the American scene. Alongside of these contemporaries, Aristotle appears: his "democracy"—the perverted form of the rule of the many—is the equivalent of the dictatorship of the proletariat; his "oligarchy" is the equivalent of fascism or the dictatorship of the bourgeoisie. Indeed, Professor Holcombe tries to identify fascism with the bourgeoisie. More cogent evidence suggests that it is a middle-class movement. The evidence is even stronger in Germany than in Italy; for there an impoverished and baffled middle class, which had nothing to lose and was ready for adventure, preferred the swastika to the hammer and sickle.

Aristotle believed that a state governed by the middle classes is the safest, as against domestic disorder, and the best practically attainable. Professor Holcombe apparently shares this view. He devotes his fourth chapter to the function of the middle class; the fifth chapter to its program; and from this standpoint he analyzes sympathetically the main features of the New Deal. It is not easy, of course, to define the middle class. Aristotle himself was indefinite. We must envisage neither the very rich nor the very poor, but people who regard themselves as forming a separate category between the two extremes of bourgeoisie and proletariat.

Professor Holcombe sets great store by education—education for citizenship and statesmanship—in his urban middle-class state. Schools

will inculcate the right belief in justice and liberty, as well as "loyalty to the spirit of the constitution." In this respect, it appears they will be modelled after the educational establishments in Russia and Italy!

EDWARD M. SAIT.

*Pomona College.*

*Law and the Social Order.* By MORRIS R. COHEN. (New York: Harcourt, Brace and Company. 1932. Pp. xii, 403.)

In this volume Professor Cohen has brought together and reprinted some thirty essays and book reviews on legal philosophy, published over a period of twenty years in various legal, philosophical, and other periodicals. These are now presented in four groups. The first, on the social scene, and the fourth, on contemporary legal philosophy, consist for the most part of critical reviews of books by American and European judges, lawyers, and publicists, including Oliver Wendell Holmes, Roscoe Pound, Herbert Hoover, Elihu Root, Rudolf Jhering, Joseph Kohler, Krabbe, and Pierre de Tourtoulon.

The second group, on law and the social order, and the third, on law and reason, are more extended essays discussing a variety of problems of legal philosophy, such as property and sovereignty, the basis of contract, the process of judicial legislation, the place of logic in the law, law and scientific method, and philosophy and legal science.

Most of the earlier articles first appeared in the *New Republic*; while it is significant of the increasing recognition of this philosophical writer by the legal profession that the later articles were largely published in leading law journals. Two of the reviews were first presented in the *American Political Science Review*.

A collection of this kind must lack the rounded completeness of a formal treatise. But the arrangement brings together discussions of related topics; while there runs through all of them a consistent point of view and basic ideas. These common elements of a philosophy of realistic rationalism and the principle of polarity, the author has set forth more fully in his volume entitled *Reason and Nature*. By the principle of polarity he means that categories which are generally believed to be opposed to each other actually involve and determine each other, like the positive and negative poles of a magnet. As one reviewer of this book summarizes this attitude: "He neither mistakes a half truth for the whole truth, nor for a lie, but recognizes it for what it is, and looks for the opposing and supplementary half-truth."

In the earlier papers, Professor Cohen criticizes conservative views and writers on legal problems. The later papers note defects in the methods and attitudes of the "liberal" writers and emphasize the importance of

logic and reason in law, as he has elsewhere urged its importance in science.

This balanced attitude may be illustrated by the article "On Three Political Scientists"—Herbert Fisher, Leon Duguit, and Harold Laski. He has praise, as well as criticism, for the moderate liberalism of Fisher. He finds both Duguit and Laski stimulating, but subject to important limitations. The latter "are due to an unavowed craving for absolute distinctions which is apt to be strongest in those not devoted to technical philosophy. The public demands it of those engaged in political discussion. People generally cannot get enthusiastic about tentative policies and reserved statements. They crave absolute certainty from the statesman as well as from the physician and the priest. That is why the most influential factors in the world's political discussion have been absolutistic theologians like Calvin, doctrinaire Hegelians like Karl Marx, or classificatory zoölogists like Aristotle."

JOHN A. FAIRLIE.

*University of Illinois.*

*Brandeis: Lawyer and Judge in the Modern State.* By ALPHEUS THOMAS MASON. (Princeton: Princeton University Press. 1933. Pp. 203.)

This book is not a biography of Mr. Justice Brandeis, but an interpretation; and as such it deserves a place beside the two excellent interpretative studies which we already have. Alfred Lief presented the social and economic views of Brandeis by a shrewd selection of his judicial opinions and other utterances. Felix Frankfurter has recently edited a group of brilliant essays interpreting the salient phases of Brandeis' social and legal philosophy. Professor Mason's method has been quite different. By hanging his material on a roughly chronological outline down to Brandeis' accession to the Supreme Court (Chapters I to VI), he has lent coherence to his narrative and at the same time has given a clear view of the predatory economic theory and Bourbon legalism against which Brandeis reacted so strongly. The portrayal of that reaction, which first took form in Brandeis' unique activities as the "people's lawyer," and later expressed itself even more effectively through the famous "Brandeis briefs," is not the least of the author's contributions. We see the man and the lawyer against the background of his times, and we understand clearly why the smugly orthodox should have viewed his elevation to the bench as a dangerous menace to the safety of the existing social order. The rest of the volume deals topically with some of the more conspicuous ideas and problems with which the judicial labors of Mr. Justice Brandeis have been concerned. Here we find emphasized his relentless reliance upon facts in the judicial process, his position with regard to trade unions, his

theory of rate base and fair return, and his unyielding defense of individual civil liberties. There follow an illuminating comparison of Holmes the "skeptic" with Brandeis the "crusader" and a useful chapter of conclusions.

While Professor Mason has, of necessity, covered much familiar ground, his study at the same time either places needed emphasis or throws new light upon several aspects of the mind and work of this great judge. Those points which impressed the reviewer most strikingly may be mentioned. (1) Brandeis has always opposed the idea that the expanding size of business organizations or administrative units is evidence of economic progress or national well being. The resulting unwieldiness of these huge agglomerations of wealth and power impedes rather than promotes efficiency. At the same time, they constitute a continuing menace to that freedom of individual opportunity so essential in his judgment to a sound and wholesome national life. This has been said before, but Professor Mason wisely stresses it. (2) Brandeis has very properly been regarded as the strong friend and defender of labor. He believes in the necessity for and utility of labor unions and all the normal processes of collective bargaining. He has as advocate and judge defended the broadest types of protective labor legislation. But he has just as sternly resisted the selfish and unjustifiable demands of labor. He believes that trade unions should be incorporated and held legally responsible for their misdeeds, and he has refused to admit the existence of a wholly unrestrained right to strike. His social philosophy is too broad to be confined within the limits of narrow class interests. (3) The author states (p. 170) that "Mr. Justice Brandeis' liberalism as to economic and political rights is wanting in his opinions on 'moral' issues. . . . He has proved himself an authoritarian and even a paternalist in his interpretation of the Eighteenth Amendment and the Volstead Act." In support of this criticism, reference is made to the cases in which the Court speaking through Mr. Justice Brandeis denied the breweries and distilleries compensation for their losses when national prohibition became effective, upheld the conviction as against the claim of double jeopardy of the same person for possessing and then selling the same liquor, upheld the confiscation of "an innocent owner's motor car simply because a guest passenger has a small flask of whisky on his person," and held valid the rigid legislative restriction of medical prescriptions of liquor.

A re-reading of these opinions leads the reviewer to disagree with Professor Mason on this point. Each case seems fairly explainable in terms having nothing to do with the fact that liquor is the subject-matter of the legislation involved, and there is no internal evidence of "moral" prejudice. In the opinion of the reviewer, his attitude can with more reason be explained (a) in terms of adherence to long established and well recog-

nized principles of constitutional law, as in the compensation and double jeopardy cases, or (b) as recognition upon the part of Mr. Justice Brandeis of the propriety of allowing Congress the widest possible choice of means to carry out the experiment of prohibition upon which it had embarked. This has been his consistent attitude toward other legislative experiments, just as it has been the attitude of Mr. Justice Holmes, who, incidentally, concurred in all four of these decisions. Perhaps Professor Mason knows from other sources that Mr. Justice Brandeis holds "illiberal" views upon the "moral" question of prohibition, but these decisions alone seem hardly sufficient evidence to support the charge. The point is, of course, a very minor one.

Finally (4), perhaps the most unique suggestion made by the author is that Brandeis is the spiritual father of the New Deal. Thus in the Preface one reads: "When one observes how, in recent years, his work and his ideas have been vindicated, Brandeis emerges as a truly remarkable figure. Recent events have borne out his fears as well as his hopes. There is scarcely a phase of the recent economic and social débâcle that he did not foresee. In their effort to deal with it, the Roosevelt administrators have been guided, essentially, by the philosophy and by something of the spirit of Brandeis. The New Deal is a response, as the President himself has said, to the country's need for "bold, persistent experimentation." While Mr. Justice Brandeis may not welcome all the responsibility thus thrust upon him, there can be little doubt that this suggested parallel of ideas is very striking, and that the Brandeis influence upon many of the most influential members of the "brain trust" has been potent.

The casual reader may complain of the more than five hundred footnotes with which the author has cut up his pages. The reviewer, who is not a casual reader when it comes to material on Brandeis, believes that these citations, quotations, and bibliographical references a good deal more than pay their way. The text itself is well written and interesting. A book like this will help smooth the path for a thoroughgoing biography of Mr. Justice Brandeis.

ROBERT E. CUSHMAN.

*Cornell University.*

*Judicial Control of the Federal Trade Commission and the Interstate Commerce Commission, 1920-1930.* BY CARL MCFARLAND. (Cambridge: Harvard University Press. 1933. Pp. 214.)

Although this book is an addition to an already rather voluminous literature, the competence and good judgment of its author make it a distinctly worth-while one. As is generally known, the Supreme Court has, in the enjoyment of its unlimited and beneficent discretion, per-

mitted the Interstate Commerce Commission considerably greater freedom than the Federal Trade Commission, in their respective fields; and Mr. McFarland, after displaying this fact in detail (in which connection he shows himself able to steer clear of judicial jargon to a remarkable extent), asks its reason.

His answer (Chapter V) includes a variety of considerations: (1) The railroads are a public utility, but the mercantile world is not (this was before the N.I.R.A.). (2) The superior excellence, particularly as to administrative experience, and qualities of tact and harmony which this gives, of the older commission. (3) The much higher persuasiveness and informativeness of the opinions with which the Interstate Commerce Commission customarily supports its determinations. (4) The difference in the enforcement procedure open to the two commissions: "the orders of the Interstate Commerce Commission, unless set aside upon application of private parties to the courts, become effective within a specified time; but the Federal Trade Commission must apply to the courts for enforcement of each order"—an arrangement which puts the burden of proof on the Commission. (5) The much longer history of the Interstate Commerce Commission. Though once regarded by the Court as an interloper in the governmental field, it is so no longer. But the Federal Trade Commission is still a newcomer, and hence treated with the proper amount of suspicion. (6) While Congress since 1906 has steadily backed up the Interstate Commerce Commission, adding to its powers and responsibilities steadily, its attitude toward the Federal Trade Commission, once the latter had been brought into existence, has been that of Deity, who "does not tinker with a perfect plan."

All these points are well argued. Possibly the first and fourth are given insufficient weight. There can be little doubt that the Court's attitude toward the Federal Trade Commission has reflected to an important extent certain constitutional theories regarding the rightful powers of government; and in subjecting the Federal Trade Commission to the same procedure as it did the Interstate Commerce Commission at first, Congress definitely invited the same kind of judicial interference with the former as originally destroyed the effectiveness of the latter.

Some sentences from the author's final paragraphs state so effectively the most important conclusions of the volume that they should be quoted: "As the veto power of the courts is less and less to be explained (justified?) on the basis of a *laissez faire* philosophy, judicial interference with administrative regulation will become increasingly objectionable. However, the judiciary—as shown by the experience of the Interstate Commerce Commission—does respond to a determined legislative policy. . . . In the absence of clear and continuous manifestation of legislative policy, the courts fall back upon the common law and deny administrative author-

ity. . . . Effective regulation under such a system [requiring 'joint action of judicial and administrative agencies'] is secured by the active co-operation of the legislative with the administrative arm of government."

EDWARD S. CORWIN.

*Princeton University.*

*Double Taxation of Property and Income.* By ARTHUR LEON HARDING.  
(Cambridge: Harvard University Press. 1933. Pp. 326.)

Double taxation is abhorrent to a professor of conflict of laws, because it seems illogical to him that two states should have jurisdiction to tax the same thing or claim. Conflict of laws as it is studied and taught in American law schools differs from that subject as it is studied and taught in Continental or English universities. Conflict of laws in the United States is often confused with the law of federalism, and it is difficult to tell whether any given rule is a constitutional rule of interstate relations, or of national-state relations, or a true rule of the conflict of laws, in the sense in which that phrase is used elsewhere, i.e., the rules governing the choice of law between laws of different nations. Professor Harding's book is a study of the internal conflict of laws of the United States much more than it is a study of the conflict of laws as applied to the field of American law versus some foreign law.

Without ever explaining why double taxation is vicious, Professor Harding develops an interesting thesis of the test which should, in his opinion, be applied to the question of whether a state has jurisdiction to tax things or claims. His conclusion is that the "integration test" is the one which ought to be applied and which is now being applied by the Supreme Court of the United States and by most of the state courts. On page 42, the formula to be used is presented: "It appears that the state may tax all property, goods, labor, services, and the like which have become identified with the economic structure of the state by incorporation into or integration with the business mechanism so defined. Generally speaking, the state is without power to tax wealth which has not become so integrated with the economic mechanism, even though the state may afford that property some protection, even though it may confer upon that property some benefit, and even though it may have the power to exercise some control over the property, or have jurisdiction over it in the larger sense of power to affect or effect rights in the property. It will be seen that there is a very minor exception to this principle in a few court decisions which allow a tax at the domicil in preference to permitting the wealth to go entirely tax-free. The right to tax then depends upon the fact that the economic wealth is being used in the coördinated economic task of the social group; that it is producing utility or wealth or

service in connection with, as a part of, and because of, the economic solidarity of the social group; or that it has been so situated by the owner that its value or utility is increased because of the effect upon it of this interplay of individual and group purpose and enterprise." And again, on page 43, the author says that "it will be seen that, if the arguments here advanced are sound, jurisdiction to tax differs from the concept of jurisdiction in the wider international sense, employed in the conflict of laws. In the wider sense, jurisdiction means a capacity in the state to control, change, or otherwise affect the ownership, custody, and use of property."

The book is devoted to the application of this test to the different types of taxes—ad valorem taxes, inheritance and transfer taxes, taxes on persons, income taxes, and the taxes on acts.

The book is well done, clearly written, and represents a type of work in which law and political science are sadly lacking, because in it the author attempts to inject some rational system and arrangement into a confused field of the law. Occasionally one feels that he is too intent upon his formula, as when he speaks of the cases limiting the power of the national and state governments to tax instrumentalities of each other, as though these rules depended upon concepts of jurisdiction. They, of course, are rules of federalism, not rules of the conflict of laws.

The fact that Professor Harding's test is not as precise as he seems to think it constitutes no valid objection to it, because the test is justifiable if it makes it possible to understand the cases and prophecy future decisions the better because of it. No question exists in the author's mind, nor in this reviewer's, that the formula advanced in this book is helpful in explaining the trend of decisions. Professor Harding has succeeded in emphasizing a significant factor in the law governing jurisdiction, namely, the economic factor; and to have applied his test, formulated with reference to the economic factor, so thoroughly to the decisions on double taxation is in itself a notable and worth-while accomplishment. Books and critical articles are cited frequently, and the footnotes often contain brief summaries of points of view expressed in periodical literature. The book is not restricted to cases alone, for the theoretical writings have been examined with care.

Persons interested in constitutional law and federalism will appreciate the book despite the fact that it is a study in the conflict of laws.

OLIVER P. FIELD.

*University of Minnesota.*

*Recent Political Thought.* By FRANCIS W. COKER. Century Political Science Series. (New York and London: D. Appleton-Century Company. 1934. Pp. ix, 574.)

A volume by Professor Coker dealing with contemporary political theory was announced ten years ago. Students of this subject have been awaiting for a decade, therefore, the mature results of the author's scholarship. This period of expectation has been amply recompensed by the work which now comes from his pen. It is beyond doubt the best of the works on current political thinking, even aside from the advantage which it secures from being the latest to appear. Perhaps one of the chief regrets is the fact that there is so little of the author himself expressed in the interpretations which run through the volume. It is a work which should prove as valuable to the general reader as to the instructor who is looking for a textbook on contemporary thought.

There are striking features in the organization of the work, aside from the conscious elimination of a study of psychology and method in relation to politics. Almost precisely the first half is devoted to proletarian thought, a somewhat restricted middle portion deals with recent democratic theory, and the remainder examines the question of political authority and individual liberty. Such an organization is a matter of choice and emphasis, but it is a departure from the orthodox balancing of individualism and related concepts over against proletarian collectivist theories. The author sets the nineteenth-century individualistic world-view against philosophical idealism, Fascism, National Socialism, *Machtpolitik*, and political pluralism. Modern political conflict may show that the real antithesis, as the author implies, is between the *Weltanschauung* of Communism and that of Fascism and its bourgeois affiliates, such as nineteenth-century economic individualism.

In regard to a work of such masterful exposition and detachment, any reservations—and no critique is complete, of course, without reservations—must spring from subjective rather than purely scientific motivation. It is perhaps as true of Professor Coker as anyone else that for every two lines written there is another implied between. It is surely not an oversight that Hitler's *Mein Kampf* and other authoritative exponents of National Socialism, such as Rosenberg, are not listed in the bibliography on pp. 495-496, nor that this movement of gothic doctrinal roots should receive little more than mention in Chapter XVII. The reviewer has never been completely unfriendly toward political idealism. Consequently, it is somewhat of a shock to find Bosanquet's rational general will classified in a group of thinkers, including Pobiedonostsev, who believed that "the people have no uses for science and literature . . . they do need superstition, which education destroys . . ." (p. 438).

The communist seems to have accepted the challenge of fascists that their quarrel is one of fundamentally divergent philosophies. This question of Marxism *versus* Culture, so important at least to National Socialism, perhaps deserves closer analysis than Professor Coker offers. It

would clearly be impossible for a non-Marxian to write an account of scientific socialism which would please the "official" Marxians of Russia. The official Marxians would contend that they are the genuine followers of Marx, and they would deny vigorously the implication of the author that they are not true sons of the *Communist Manifesto* and the *Capital*. They would say that there is no real difference between "orthodox" and "revisionistic" Marxism, and that Professor Coker's distinction between these arises from his acceptance of such writers as Kautsky as true interpreters of Marx. In Lenin there was, in this view, a return to Marx and not a modification of his doctrines.

The author is to be congratulated particularly upon the bibliographical work that he has done in this phase of political study. The volume should prove an invaluable guide for all who wish to read in the field of recent and contemporary political thought.

FRANCIS G. WILSON.

*University of Washington.*

*Johann Gottlieb Fichte: A Study of his Political Writings, with Special Reference to his Nationalism.* By H. C. ENGELBRECHT. (New York. Columbia University Press. 1933. Pp. 221.)

Hitler's advent to power in Germany has given a most timely significance to this able and competent study; for, notwithstanding Fichte's republicanism, he is rapidly becoming the patron saint of National Socialism, and this with a good deal of reason. For National Socialism contains massive elements of Rousseauistic radicalism, and Fichte's ethical optimism, which Engelbrecht brings out with such vividness, has flowered forth amongst National Socialist doctrinaires into a sentimental illusionism regarding the infallible wisdom of the "people" which has had no counterpart in European history outside of the radical Jacobinism of the French Revolution and the reign of terror which followed it. It is precisely of this sentimental enthusiasm of the French Revolution that our author shows Fichte to have been the most eloquent apostle in Germany. The violent nationalism into which it turned in France under the Terror, the Directorate, and the First Napoleon is strikingly mirrored by Fichte's development after Napoleon had struck down Prussia at the battle of Jena. The author's purpose of correcting the previous one-sided impression given by writers on Fichte who have limited themselves to the reading of his *Reden an die deutsche Nation* has been achieved, and his readable and well-documented discussion of Fichte's political thought may perhaps prevent American scholars from accepting contemporary German interpretations at their face value.

Mr. Engelbrecht acknowledges his indebtedness to Mr. C. J. H. Hayes, and rightly; for his book bears all the earmarks of having been inspired

by the work of that distinguished scholar and thinker. Yet one might wish that it had led him into a more detailed consideration of Fichte's thought in terms of Christian conceptions. This would have shed greater light on Fichte's relation to the Free Masons than the rather scattered Appendix on this subject affords us. Since Fichte's nationalism was tempered by a strong sense of cosmopolitanism, as Engelbrecht correctly points out, the idea of the natural man who is always to be found beneath cosmopolitanism deserves more careful scrutiny; for this idea varies according to the environment within which the particular thinker happens to live, and is usually a generalization from observed matter of fact. Fichte's natural man happened to be moral and devoted to culture, but why he was moral is not clear. Engelbrecht devotes but little effort to an analysis of the conditioning patterns in this particular sphere of assumptions and prejudices, although he gives laudably full accounts of Fichte's travels and experiences and relates these to the ideas of nationalism, republicanism, and socialism. He lays important emphasis on Fichte's low origin and the pride he took in being a commoner.

It is regrettable that there is no escape from Engelbrecht's conclusion: "Fichte is one of the prophets of German nationalism. He has influenced the growth of the national movement in Germany. But the revolutionary Fichte, the socialist Fichte, the Jacobin Fichte, who was the heart and soul of the nationalist Fichte, has been conveniently obliterated." If the concrescence, if the kinship, of these ideas were more generally recognized, the first step toward mastering all of them would have been taken.

CARL JOACHIM FRIEDRICH.

*Harvard University.*

*Germany Prepares for War; A Nazi Theory of "National Defense."* By EWALD BANSE. (New York: Harcourt, Brace and Company. 1934. Pp. 357.)

*Nazi Means War.* By LELAND STOWE. (New York: McGraw-Hill Book Company. 1934. Pp. 142.)

Ewald Banse, pseudo-geographer, was appointed professor of military science at Brunswick Technical College in February, 1933. He has written *Wehrwissenschaft* and *Raum und Volk im Weltkriege*. The former volume preached *Schrecklichkeit* and bacteriological warfare. Because of foreign criticism, the book was suppressed by the Nazi régime on October 20, 1933. On November 3, the publishers of the second book sold the English language rights to an English publishing house. On the same day, the German government confiscated the work and denounced it as the "senseless babblings" of an "irresponsible theorist" who was furnishing material for anti-German propaganda abroad. It was, nevertheless, translated by

Alan Harris, and is now published in Great Britain and the United States as "an astonishing revelation of aggressive tendencies" by "a distinguished scholar and scientist" who is alleged to be an official spokesman for the military policies of the Third Reich.

That the rulers of the new Germany are romantic devotees of the *Heldenstum* ideal, that they are utilizing every available means to inculcate war-worship in the masses, and that they are committed to a program of expansion involving the ultimate partition and destruction by military violence of Germany's neighbors, is beyond question in the minds of all well-informed observers of National Socialism. That the English-speaking world deserves to be fully informed of these facts also admits of no debate. That the translation and publication of this particular volume is the best means of achieving this end, however, is extremely doubtful. In the first place, the English title is highly misleading. The volume is concerned only incidentally with Germany's preparations for the next war. It consists primarily of a series of stale, *post mortem* observations on the last unpleasantness. In the second place, the volume is in no sense representative of the military literature of Hitlerism. The writings of Hitler, Rosenberg, Constantin Hierl, and many other Nazi leaders are far more revealing of the spirit of the new militarism. And as for the science of strategy, the Nazi régime has at its disposal scores of able tacticians, compared to whom Banse is a mere muddle-headed amateur.

Banse's book is valuable, therefore, only for foreign laymen who are completely ignorant both of Nazi militarism and of military science. Blood and thunder are here in abundance: "A grim, iron age lies before us. . . . The sword will again come into its own . . . War is a grand stimulant and uplifter . . . , etc., *ad infinitum*. But the observations on strategy, past and prospective, and on national geography and psychology are too puerile to be taken seriously by any one. Here is much nonsense about "war-like and pacific temperaments" among races, trite comments on the tactics of the Great War, platitudes about climate, resources, and morale, and more nonsense about Poland, "restless, ambitious, and greedy," deserving of a new partition, Jugoslavia, "the Balkan war-profiteer," Czechoslovakia, "an ulcer in Germany's side," and other prospective enemies and allies. A clue to the writer's mentality lies in the sentence: "It is possible to get moon-stroke as well as sun-stroke, as the author himself once learned to his cost in North Africa." If re-armed Germany had to rely on such moon-struck strategists as Banse, the world would have little cause for apprehension. Unfortunately, far wiser and more dangerous practitioners of the art of war will be available when the day of reckoning arrives.

Leland Stowe's little book is far more useful for an understanding of contemporary military developments in Germany. The author is a for-

eign correspondent of the *New York Herald-Tribune* who spent two months in Germany last autumn. His book is journalism, but journalism of the best type, accompanied by many shrewd observations and characterized by well-balanced judgments and interpretations. He examines with some care the extent of German re-armament and of Nazi war preparations, material and psychological. Some of his facts are already out of date. His calculation that there are 1,330,000 men in uniform in Germany was contradicted as long ago as last October by Roehm's admission that there were 2,500,000 members of the S.A., S.S., and Stahlhelm. Stowe errs elsewhere on the side of underestimating the extent of re-militarization. As a whole, however, the book is a valuable summary of the steps taken by the Nazi régime during its first eight months in power to prepare Germany for the conflict to come. The final chapter on the possibility of American neutrality in the next European war contains a number of useful suggestions deserving the thoughtful consideration of all Americans interested in refraining from making the world safe for democracy.

FREDERICK L. SCHUMAN.

*University of Chicago.*

*International Organization.* By HAROLD M. VINACKE. (New York: F. S. Crofts and Company. 1934. Pp. x, 483.)

"Law, organization, and politics . . . seem to present the large natural divisions of the field of inquiry of those concerned with the family of nations. This book is designed to serve the needs of those interested in study of the restricted field of international organization." In these words from the Preface, Professor Vinacke explains his purpose. He adds that the book is planned upon the conception that international society has essentially the same needs to satisfy as has a national society: these are for "legislation, adjudication, execution, and administration." The volume is, therefore, a functional study, and analytical rather than descriptive.

The book consists of fifteen chapters—466 pages of readable text. The first five chapters deal with the organization and nature in general of the community of nations. This includes the national state and its organization for the conduct of foreign relations. One chapter considers such international law as seems essential to the study of international organization; it can hardly be done effectively in so limited a space. More attention is given to the theoretical foundations—the federal principle and the "associative" principle; and a comparison between the governmental development of the United States and that of the community of nations occupies more space than does all of international law. The author denies that there is international government: "the basic principle of this organization is associative rather than governmental" (p. 121); in the field

of international administration, however, "voluntary association and co-operation has tended to give way somewhat to the larger and stronger principle of government" (p. 102).

The following three chapters are assigned to international legislation—custom, the non-League conference system, and the League system. Three more chapters deal with the settlement of international disputes—arbitration, the Permanent Court, and conciliation. There are two chapters each for the executive function (including security and sanctions, and the execution of peace treaties), and for the administrative function, in and out of the League. The result is to give striking and unusual emphasis to the executive function, usually regarded as weak in international society.

The material is well digested and objectively presented, in the author's own words, with little technical jargon. His own views do not appear, unless by implication. The illustrations are simple, unhurriedly presented, and helpful—in spite of the perils of analogy. The work shows much original thinking; Professor Vinacke is interested in motivation and effects, and pays more attention to procedure than to structure. References are limited in number, but they are to standard and accessible works, and to original sources. There is no bibliography. The book is written cautiously, and may perhaps be charged with vagueness in spots; but there are few mistakes. It may be asked whether Article 26 of the Covenant has been amended (p. 104, note 7). Doubtless the author meant to say that the United States is a signatory, rather than a party, to the Inter-American Treaty of Arbitration (p. 234).

The book will be very useful and comprehensible for those seeking an understanding of the methods by which the community of nations acts.

CLYDE EAGLETON.

*New York University.*

*Lord Riddell's Intimate Diary of the Peace Conference and After.* (New York: Reynal and Hitchcock, Inc. 1934. Pp. xii, 435.)

Lord Riddell was the official British press representative at seventeen post-war international conferences, beginning with the Paris Peace Conference and ending with the Washington Disarmament Conference. In that capacity he acted as an official link between those conferences and the British press, was naturally a privileged observer, and had, as he himself says, "special facilities for recording what took place both on the stage and behind the scenes." He was, in addition, personally acquainted and friendly with the leading participants in these conferences, closely associated with the British statesmen and politicians of the war and post-war period, and particularly intimate with Lloyd George and the members of his government. Lord Riddell made good use of these opportunities

and (in spite of a deep hatred of "the mechanical labor of writing with his own hand") kept a careful diary which has now been completely published, the volume under review covering the period from November, 1918, to November, 1923, and being a sequel to the previously published *War Diary*. This book is therefore a rapid survey of international affairs and of British politics during the immediate post-war years, is replete with pithy observations on the men and events of those striking times, and frequently contributes additional information of importance.

There are many moving accounts of particular events, such as the ceremony of handing the Treaty of Versailles to the Germans and the Washington Conference. Even more interesting are the comments on the men who participated in these events, among them Clemenceau, President Wilson, Lloyd George, Balfour, Hughes, President Harding. It is particularly noteworthy, in view of recent developments, that many of these war statesmen were apparently completely aware of an approaching social revolution and quite tolerant of it. Lloyd George is quoted as saying that he would like to see some Communists in Parliament; at a dinner attended by Lloyd George, Bonar Law, Field Marshal Sir Henry Wilson, and Lord Riddell, there seemed to be some doubts about the sacredness of the profit system; Bonar Law as well as Lloyd George considered the nationalization of the coal industry inevitable; Mr. Baruch expressed himself as prepared "to give up voluntarily, through the medium of taxation, a very large part of my income. I am convinced that, unless the wealthier classes take that course, they may have everything taken from them."

Among other interesting revelations in this Diary are that Baruch was offered the post of Secretary of the Treasury by Wilson (presumably after the resignation of McAdoo), but declined because he was a Jew and feared to embarrass Wilson; that Bonar Law considered that Kitchener was incompetent and had let Asquith down; that Lloyd George proposed, in 1919, to form a new party, and considered resigning in 1920; that Ambassador George Harvey had become converted to prohibition; that the idea of the Washington Conference actually originated in the British Imperial Conference of 1921 and that Lloyd George broached the idea to the United States, China, and Japan. "This," says Lord Riddell, "is one of the best things L.G. has done. There is no doubt that Harding's action is due to his initiative." But probably the most dramatic revelation is that President Wilson, in an interview with Baruch early in 1923, said: "Perhaps it was providential that I was stricken down when I was. Had I kept my health, I should have carried the League. Events have shown that the world was not ready for it. It would have been a failure. Countries like France and Italy are unsympathetic with such an organization. Time and sinister happenings may eventually convince them that some

such scheme is required. It may not be my scheme. It may be some other. I see now, however, that my plan was premature. The world was not ripe for it."

These are but a few specimens of the rich content of the book. It is a most entertaining and instructive addition to the growing literature on the post-war period.

CLARENCE A. BERDAHL.

*University of Illinois.*

*The Chinese; Their History and Culture.* By KENNETH SCOTT LATOURETTE. (New York: The Macmillan Company. 1934. Two volumes. Pp. xiv, 506, 389.)

Professor Latourette's interest in the Far East, early stimulated by membership for a period on the faculty of Yale-in-China, was first manifested in literary form by the publication in 1917 of *The Development of China*. This was designed, in the words of the author, as "a short sketch for college courses which devote . . . only six weeks or so to China. . . ." In the same year appeared his *Early Relations Between the United States and China (1787-1844)*. There followed, in 1918, a companion to the first work, on Japan, and eleven years later the masterly *History of Christian Missions in China*—a study almost indispensable to three classes of students: those of missions, international relations, and modern Chinese history. Completing, in a sense, and rounding out the three earlier studies on China is the significant work under review, which "is meant to be a fairly full summary and interpretation of what is known about the Chinese, both for the general reader and for longer, more detailed college and university courses on China."

A few of the difficulties faced by one who would do what Dr. Latourette has done are indicated by him in his preface. As he frankly states, the "sinologist will discover in the volumes little, if anything, which he does not already know. . . . The value of such a work rests not on fresh research in specialized fields, but on the summary and interpretation of results available in detailed but unconnected studies." What has been attempted, then, is the assembling from innumerable monographs, general works, and periodicals of knowledge of the past rendered available during the half-century which has elapsed since S. Wells Williams' *Middle Kingdom* was last revised, and of developments in China in recent years, many of which can be comprehended only in the light of the past and in turn throw light upon that past.

Confronted with the dilemma, in dealing with a field vast in area, population, and chronology, of choosing between loading his text with details of facts and names and presenting sweeping generalizations, the author has followed a middle ground. This must, as no one more clearly than he

realizes, result in criticism on the one hand from those who "never can remember those heathen Chinese names" and those who insist that they shall have at least an opportunity—to forget them. Some instructors, faced by classes demanding facts as well as ideas, will regret the omission of names in such statements as (Vol. I, p. 69) "at least one [ruler] established a center in which he assembled distinguished representatives of several different schools" and (Vol. I, p. 127) "one of his diplomatic agents reached the shores of the Persian Gulf." Instances similar to these may be found on pages 135, 255, 289, 307, 313, 319, 349, and 353 of the first volume, which presents the connected history of the Chinese from the earliest times to the year 1933 in contrast to Volume II which deals topically with the Chinese people; government; economic life and organization; religion, social life and organization; art, language, literature, and education; and includes a general summary.

To avoid eye-strain and mental fatigue for those who develop such on meeting footnotes, the author has used but eleven in the first volume and none in the second. To obviate the need for these aids, he has attempted to arrange his excellent bibliographies—constituting one of the most valuable features of the work—so that they shall, chapter by chapter, parallel the topics in the text. Those interested in the development of sinological studies will nevertheless occasionally regret the lack of notes to accompany such anonymous references as (Vol. I, p. 60) "One scholar has it that . . ."; (p. 67) ". . . a recent brilliant study learnedly contends . . ."; and other on pages 115 and 317.

With no desire to be hypercritical of so conspicuously worth-while a work as this, but with the hope rather that they may aid in the preparation of a later edition, the following remarks are included. There is an over-use of the authorial "we" throughout the study, and a dearth of semi-colons which renders numerous sentences unduly complicated. Typographical errors are to be found in Volume I, p. 380, and Volume II, pp. 35, 46, 58, 75, 245. The declaration (Vol. II, p. 283) that the decaying vigor of the Manchus was the cause of the decline of Chinese creative civilization is decidedly debatable. The statement (Vol. I, p. 427) that Sun Yat-sen was "in Europe at the inception of the outbreak" of the 1911 revolution is inaccurate: he was in the United States, but went on to Europe instead of turning back to China as he considered doing. On page 434, the three-line explanation of the *San Min Chu I* leaves something to be desired from the standpoint of accuracy. The account of the origins of the 1931 outbreak in Manchuria (Vol. I, p. 464) is inadequate; it should be either more or less detailed. Incidentally, Marshal Chang Hsueh-liang was not in Manchuria in September, 1931, as is clearly implied in this account. The figures given for the foreign population of China in 1928 (Vol. I, p. 458) are incorrect and misleading (see *China Year Book, 1931*, p. 3).

The addition of maps to illustrate the expansion of the Empire would enhance the clarity of the accounts of pre-Ming China.

Despite minor errors, and an occasionally debatable method of handling his material, Professor Latourette has met a long-standing need by the preparation of this study. He need not be invited to fling away his ambition to offer to the Western—and, it may be added, the Chinese—student a work comparable in scope to that of S. W. Williams. What that of the earlier scholar was to his generation, this one is to the present. Because of the advance being made in sinological studies, Latourette's work may not be standard as long as was Williams', but that need worry neither author nor reader. The next generation may look out for itself—it generally does. In the meantime, there is at least one work which serves as an excellent introduction to the study of Chinese history and culture, both factually and ideologically.

HARLEY FARNSWORTH MACNAIR.

*University of Chicago.*

*Empire in the East.* EDITED BY JOSEPH BARNES. (Doubleday, Doran and Company. 1934. Pp. vii, 322.)

This interesting discussion of certain forces at work in the Far East is the work of members of the American Council of the Institute of Pacific Relations. It is composed of ten essays written in close collaboration under the editorship of the new secretary of the Council. The essays overlap only slightly, and although the topical treatment prevents continuous exposition or argument, the net result is an admirable coverage of important aspects of a many-sided problem. Addressed to the general reader, the book is available also as collateral reading for college classes. Large type and two maps are attractive features. There is no index and no bibliography.

The editor has omitted, perhaps with prudence but also with some loss of completeness, any treatment of internal politics in Far Eastern states. Three essays are devoted to Chinese reactions to cultural intervention, six deal mainly with economic issues, and one with American policy. In the first group, the contribution of Owen Lattimore, "China and the Barbarians," and that of Pearl Buck, "Missionaries of Empire," are likely to provoke considerable comment and to furnish ground for debate. The former views China as a cultural rather than a political entity, engaged today as throughout her past history in meeting poison with antidote by pitting one set of "barbarians" against another. Mrs. Buck presents some striking interpretations of past and present missionary efforts, concluding with a half-prophecy that the springs of future movements of this nature will rise in Russia, Italy, and Germany. The third essay, that of Nathaniel Peffer, on "Peace or War," though it recapitulates the con-

clusions of all the contributors, is most concerned to emphasize the deeply rooted cultural differences of East and West as the cause of war, and to point to the necessity for Western peoples to discard their superiority complex if China is to survive.

Economic factors are treated vividly and with authority by Professor Orchard in "The Japanese Dilemma," Joseph Barnes in "Soviet Siberia," Grover Clark in "Changing Markets," Frederick V. Field in "Battle of the Bankers," H. Foster Bain in "Second El Dorado," and Professor Alsberg in "The Struggle for Food." Throughout these essays runs the contrast between scarcity and abundance—between food and people, raw materials and industrial ambition, opportunity for profit-making and idle capital—in effect a telling argument against either territorial or financial imperialism.

Impressive by its absence is any reference throughout the book to the possibilities of international planning or international methods of settling current difficulties. In his closely-knit exegesis of the Open Door policy, Professor Dennett is apprehensive of its implementation by a single state, since he sees it leading to intervention. He views the ineffectiveness of the Covenant and the Kellogg Pact against Japan in 1931 as sufficient proof that the peoples have repudiated international sanctions, and he correctly reasons that a nationalistic Open Door policy is less likely to be humanitarian than self-centered. Had the plan of the book permitted, one would have valued a final essay on the alternative to empire, viewed internationally. But as it stands the work is an incentive to thought upon that problem.

HAROLD S. QUIGLEY.

*University of Minnesota.*

*The Dutch East Indies; Its Government, Problems, and Politics.* By AMRY VANDENBOSCH. (Grand Rapids: Eerdmans. 1933. Pp. 385.)

To readers of English, seeking acquaintance with the institutions of the Dutch East Indies, this book will take its place beside that of Kat Angelino, of which the abridged translation was published in 1931. Less bulky than that, less general and philosophical, it will probably prove to American students the more serviceable guide. It offers a more effective bibliographical apparatus. For some purposes it is helped rather than hurt by the fact that it was written by an outsider, not by one immersed in the subject treated. Vandenbosch is far enough away from his subject to be able to sketch it in good perspective, and is the more ready to admit possible differences in the interpretation of facts. He has a good command of the literature, in documents, books, and periodicals, and spent a year in the Netherlands and in the East Indies, interviewing officials and private persons, and observing affairs on the spot.

The author's task is difficult. The island empire of the Dutch combines Europeans, Eurasians, Indonesians, and such foreign Asiatics as the Chinese and Arabians. It includes Java, one of the most densely populated areas of the earth, and outer islands where the population is sparse and primitive. Some twenty distinct areas are recognized, marked by differences in the customary laws to which the natives are subject. There is not only the contrast of native religions, but also the reflection of the religious element in Dutch political life, leading to the anomaly of a state church, Christian, under a government in which the native influence, Moslem, is constantly growing. In recent years, imported ideas of communism and nationalism have brought new strains into the structure of society, and the world economic crisis has disordered both private and public finance. The interaction of elements may be illustrated by the course of policy since 1900. To advance native welfare, large funds were needed. These could be got only by the taxation of enterprises financed and organized by Westerners. "Capitalists" had to be granted rights over land and rights over labor which threatened the very basis of native welfare. A more elaborate administration must be developed to check abuses and to further well-being. Expenditures for salaries increased, in millions of florins, from 37 in 1900 to 224 in 1928. The collapse of the world market has dried up the sources of revenue, but how can one stop this big machine which has been set going?

For the wealth of interesting detail furnished by the subject treated, the reader must be referred to the book itself. It is an excellent piece of work, well proportioned and soundly constructed.

CLIVE DAY.

*Yale University.*

*The United States and the Caribbean Area.* By DANA G. MUNRO. (Boston: World Peace Foundation. 1934. Pp. viii, 322.)

*Whither Latin America? An Introduction to Its Economic and Social Problems.* By FRANK TANNENBAUM. (New York: Thomas Y. Crowell Company. 1934. Pp. xix, 185.)

Professor Dana G. Munro has played during the last fifteen years an intimate, active, influential, and intelligent rôle in the relations of the United States government with the nations of the Caribbean area. After publishing a first-hand study of the five Central American republics, he served in the State Department as an economic specialist, as a member of the Latin-American Division, as chief of that division, as a diplomatic officer in Central America, and finally during an especially critical period as American minister to Haiti. Few could be as well qualified as he to write of the Caribbean countries.

*The United States and the Caribbean Area* is an accurate, objective, strictly factual, and well-proportioned account of the recent history of this region, particularly the relations of the United States with it. The six chapters of the volume are headed: Cuba and the Platt Amendment, Panama and the Canal, Relations with the Dominican Republic, The American Intervention in Haiti, Efforts to Promote Stable Government in Central America, and The American Intervention in Nicaragua. These are followed by an appendix containing the more significant treaties.

Though brief, Dr. Munro's presentation offers to the beginning student and to the general reader an authoritative factual introduction to some of the most delicate, significant, and controversial aspects of American foreign relations. It is hoped that this book may shortly be followed by one which will give the author more room for the details with which he is familiar; more opportunity for interpretation, and more scope for appraisal of policies.

Dr. Tannenbaum's book is quite different in purpose, method, and subject-matter. Attempting little of historical narrative or of factual presentation, his study poses questions, challenges previous presumptions, and suggests the need of an organized coöperative study of the economic and social problems and trends of Latin America. The eight chapters, dealing with population, industrialism, finance, foreign trade, transportation, education, labor, and agriculture, lend convincing weight to Dr. Tannenbaum's opinion that "the Latin American area represents an unexampled field for profitable research" and that much of this research is still to be done. Dr. James T. Shotwell contributes a foreword to the volume; and an appendix deals with practical problems of research in Latin-American countries. *Whither Latin America?* will be stimulating to the student; but, notwithstanding its unsensational character, it is not recommended as bed-time reading for the American investor in Latin-American bonds.

A. C. MILLSPAUGH.

*Brookings Institution.*

*Social Science Research Organization in American Universities and Colleges.*

By WILSON GEE. (New York: D. Appleton-Century Company. 1934.  
Pp. ix, 275.)

This volume, prepared by the director of the Institute for Research in the Social Sciences of the University of Virginia and issued in its series of publications, is described correctly by its title. Its scope is more restricted than that of Professor Ogg's volume on *Research in the Humanistic and Social Sciences* (Century Company, 1928), a work which provides a good background for the present study.

Professor Gee first laid out the field for his study by obtaining statements concerning local social science research organizations from most of the leading colleges and universities of the country. The results of this part of the study are tabulated and summarized in Chapter II. He then selected for more intensive study the research organizations in seventeen of the larger universities, and one college. Each of these he visited on a coast-to-coast trip in 1933. By interviews with research committee members and others, and by a first-hand study of the local situation with respect to research programs, organization, and finance, he obtained a fairly comprehensive picture of the existing research arrangements. His findings of fact were prepared for publication on the ground, and were submitted to local research committee officials for correction before he left the place. These eighteen accounts, published as "Case Studies" (Chapter III), occupy two-thirds of the entire volume. They constitute an excellent feat of educational reporting.

Writers are frequently charged with generalizing too freely from an inadequate body of facts. If Professor Gee has erred, it is in the opposite direction. He has gathered and presented more facts than any one else in this field, and has assumed that they would be sufficiently eloquent in themselves. His introductory chapter on the place of the university and college in social science research is suggestive but brief, and his short concluding chapter on forms and adaptabilities of social science research organizations tells us much less than we should like to know. Organization in any field may be only an instrumentality, a means, but its form will to a large extent control its functions, and by its functioning ends will also be determined. The reader would like to know, among other things, why it is that few research committees "function as research planning agencies" (p. 259). To what extent do they stimulate research, develop research personnel, build up research facilities, select for support the more promising research projects, encourage the use of new research methods, and integrate the research activities of related disciplines? Partial answers to some of these questions will be found here and there in Professor Gee's pages. Let us hope that he will follow this very useful factual study with some interpretative and critical articles.

WILLIAM ANDERSON.

*University of Minnesota.*

#### BRIEFER NOTICES

##### AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

*The ABC of the NRA* (Brookings Institution, pp. xiv, 185) is a publication of the Institute of Economics. No evaluation of the NRA is attempted, although problems and issues are discussed. The first chapter

sketches the lines of thought back of the National Industrial Recovery Act and gives something of its history. Succeeding chapters outline the provisions of the Act, point out the chief legal and economic issues, describe the administrative organization of the National Industrial Recovery Administration and the organization and methods under the President's Reemployment Agreement, set forth the steps in the process of code-making, and describe the machinery and methods of code enforcement. The appendix contains sample codes and other documents. Although brief, the book is a careful and balanced outline of the Act and the machinery of its administration, up to February 14, 1934. *The New Deal* (Emory University, pp. 115) contains papers from the seventh session of the Institute of Citizenship at Emory University. Opening with a letter from President Roosevelt, the papers in general radiate faith in his administration. The leading article, by Stuart Rice, is an argument for national industrial control even at the expense of quick recovery, and a defense of recent expenditures. The paper entitled "A Critical Analysis of the New Deal," by Charles W. Pipkin, appears not to justify the first half of its title. Abit Nix proposes abandonment of Jeffersonian individualism and the states' rights doctrine. T. J. Cauley departs from the rule in this series. His condemnation of the abandonment of the gold standard is not balanced by a declaration supporting the Administration. In opposing a return to gold, Fred B. Wenn brings the series back into form. Other papers discuss such questions as constitutionality, and a new deal in foreign relations and in local government. The closing article, by Chester McCall, outlines a plan for a National Institute of Public Affairs for the production of leaders among the youth, giving to selected young people a two or three months' trip to Washington for "intensive training" in governmental administration. The plan is stated to be both non-partisan and supported by Secretary Roper.<sup>1</sup>—W. REED WEST.

In *Social Change and the New Deal* (University of Chicago Press, pp. 120), ably edited by Professor William F. Ogburn, an attempt is made to portray the social and economic trends in the United States for 1933. The volume is made up of a series of essays by well known men and women. At the outset, Professor Ogburn gives the background of the New Deal and illustrates it with four excellent charts. The book covers the most interesting phases of the New Deal. Included are papers on economic recovery by Frederick C. Mills, money and finance by Harry D. Gideonse, the recovery law by L. S. Lyon and C. L. Dearing, unemployment and relief by Frances Perkins, labor by W. Jett Lauck, agriculture and rural life by J. H. Kolb, education by Charles H. Judd, the Tennessee Basin by T. J. Woofter, Jr., and others. Only a few high-lights of some of the

<sup>1</sup> See p. 504 above.

papers can be stressed here. Miss Perkins shows that relief has grown to enormous proportions on account of unemployment and that it will be necessary to continue it for some time in order to protect the standards of the workers. Professor Judd points out that while budgets for education have dwindled during the past year, the burden of the schools has at the same time been increased by reason of the large influx of students arising from the child labor provisions of the N.R.A. codes. Professor Woofter emphasizes the fact that the Tennessee Valley experiment is one of far-reaching significance in social and economic planning. In the final paper by Professor Ogburn on "The Future of the New Deal," several trends are depicted. He shows that there is a decided tendency toward the union of government and business, a "push toward monopolistic prices," and a close partnership between agriculture and the government. Another trend is governmental—the creation of many boards and administrative agencies, i.e., a trend toward a larger and more complete bureaucracy. Finally, Professor Ogburn shows how certain forces are working at cross purposes. The decline of the family, the church, and "main street" have made for more liberty, but the expansion of the state and industry have brought about many restrictions. The problem of the future is their adjustment to one another. The book contains much material of interest to political scientists; in fact, every paper in the series is valuable.—CULLEN B. GOSNELL.

*T.N.T.* (Long and Smith, pp. xxiii, 381), by T. Swann Harding, represents an effort to get back at *The Nation's Business*, Congressman Beck, the National Association of Manufacturers, and other publications, individuals, and organizations responsible for the frenzied economy drives of the present day and of the recent past. Mr. Harding, having worked both for private business and for the government, gives us many pages of comparison of the two. Private business comes out of the comparison looking rather haggard, villainous, and altogether discredited. The government—that is, the Federal Government—stands out as an unselfish, efficient, and trustworthy servant of the needs of all. The book is replete with material to prove the case. It is a splendid antidote to the widespread propaganda for government economy at all costs. It is also an illuminating contribution on all that modern government is called upon to do. Nor is it a dry compilation of statistical data. There is a punch in every page. Note some of the chapter headings: "Archaic Legalism and Government," "Lamentations of Messiahs and Critics," "The Merry Politician," "A Little Service, Please." Journalistic, flippant, propagandistic, over-exuberant, full of emotional content—the book is all of these, but one cannot help liking it. The author calls names, indicts whole professions—leaving not a lamb among them—and he exults in the constructive ac-

complishments of government experts. Mr. Harding is a special pleader; it is doubtful if he would deny it. When a man starts out on a general massacre of his foes, he is likely to grow careless. He is not always sure—if his foes be numerous—who his foes are. He is not careful about making distinctions. So with Mr. Harding and a general class he calls liberals. The liberal is many things; he is a person who steams with indignation, "redolent of almost nauseous virtue," possesses "the Soviet megalomania," is a rebel against authority, belches noisome gases, and so forth. After finishing Chapter VI, wherein the genus liberal is ingloriously defamed and injudiciously defined, the reader will conclude that a liberal is just a plain ordinary critic of the Food and Drug Administration. Despite inaccuracies, the book is instructive and racy reading. But in his next one, let Mr. Harding look to his proof-reading.—JEROME G. KERWIN.

The March, 1934, issue of the *Annals of the American Academy of Political and Social Science* is devoted chiefly to a group of twenty-one addresses and papers under the general title of *Towards National Recovery* (pp. 203), edited by Professor Ernest M. Patterson of the University of Pennsylvania. Four contributions deal with the nature and purposes of the recovery movement, four with new relations between business and government, four with the changing status of labor, four with recovery and the consumer, and five with miscellaneous aspects. In the first group, Professor John Dickinson writes of "Understanding and Misunderstanding the Recovery Program," and in the last Professor Edward S. Corwin discusses "Some Probable Repercussions of N.I.R.A. on our Constitutional System." Among the interesting conclusions arrived at in Professor Corwin's paper is that "we are to look forward to the gradual diminution in the years to come of the rôle of the Supreme Court in the determination of national policies. It will be something like the demise of the veto power of the English king." The Court's function in future is portrayed as that of "intervening in behalf of the helpless and oppressed against local injustice and prejudice (e.g., as in the recent Scottsboro case), rather than intervening in the assertion of out-of-date economic theories, as it has done too often since 1890."

Tariff tinkering with dairy products, barley, oats, and corn has been of little benefit to the American farmer in raising the prices which he receives for these commodities. This conclusion is reached in Ronald Renne's *The Tariff on Dairy Products* and Theodore Schultz's *The Tariffs on Barley, Oats, and Corn* (Tariff Research Committee, Madison, Wis., pp. 176 and 116). To a political scientist, the formidable statistical apparatus used to prove the effect, or lack of effect, of the tariff on these agricultural commodities seems, in the final analysis, somewhat incon-

clusive if not irrelevant. For throughout the discussion the reader is informed that the influence of the tariff on agricultural prices cannot be isolated from other factors such as prohibition, technological developments, weather, the character of the soil, the depression, the Federal Farm Board, and that most elusive of all economic phenomena, the world price. Probably, a statistical approach to complicated economic processes prevents the attainment of those graces of style which characterize Dr. Taussig's studies on the tariff. The student of politics looks in vain for some account of the tortuous course through Congress of the various tariff bills which have levied duties on dairy products, barley, oats, and corn. Evidence abounds in both monographs that the statistical tables and charts have been prepared with care and thoroughness.—  
GEDDES W. RUTHERFORD.

Rogues, thieves, bandits, buccaneers, marauders, filchers, pickpockets, thimbleriggers, extortionists, land-grabbers, stock swindlers, speculating scoundrels, and commercial hijackers, answers John McConaughy to his question *Who Rules America? A Century of Invisible Government* (Longmans, Green and Co., pp. 338). Had this book been published before the tragic death of the author, it is possible that some of the white-heat passages would have been cooled to a glowing red, and that he would have given us a more complete analysis of our rulers of the last generation. McConaughy holds that one of the greatest enemies of the people was John Marshall, who from usurpation to usurpation built up the power of the national government, particularly the judicial branch, for the benefit of property and privilege. The Second Bank of the United States and the protective tariff are McConaughy's twin, supreme, and "unconstitutional" abominations. While there is a fresh and ingenious reinterpretation of historical data, particularly with reference to Jefferson and Burr, there is little that is new in the story of how business has controlled government, unless it be in the novel idea which the author seems to hold that decentralization would deprive business combinations of such control.—CLAUDIUS O. JOHNSON.

If the teacher of American government believes that his students should be afforded all possible relief from the burden of reading and of analyzing and digesting what they read, he will find a *Visual Outline of American Government* (Longmans, Green and Co., pp. 105), by Shepherd L. Witman, a serviceable tool. The reviewer's opinion is that the student ought to make his own "outline," which surely, as most present-day textbooks are constructed, should be no insuperable task. The diagrams contained in Mr. Witman's hand-book are, however, in many cases worth while.

## STATE AND LOCAL GOVERNMENT

*Property Tax Limitation Laws* (Public Administration Service, pp. 92), edited by Glen Leet and Robert M. Paige, is a symposium on the desirability of and the practical experience under laws establishing legal limits to property taxes. The opinions and arguments of twenty-five or thirty contributors in the field of public administration, finance, and taxation are presented. Both sides are represented but, as students of taxation would expect, the preponderance of opinion is against hard and fast legal limits, either constitutional or statutory. The names and reputations of the contributors give weight to this opinion. There is a frantic demand for such limitations, particularly on the part of owners of real estate, but the consensus of opinion of tax experts and city officials is that the solution of high taxes must be found in other directions. Of particular interest are the articles on the operation of tax limits in those states that have had them longest and in the most drastic form. *Taxes and Tax Trends* (National League of Women Voters, pp. 144), by Katherine A. Frederic, is an elementary and popular, but strictly up-to-date, discussion of the general problem of taxation. While written primarily for women, it can be read with profit by the average man. Woven in with the discussion of various types of taxes is a great deal of interesting and useful information concerning government revenues and expenditures and the mounting volume of public debts. The book contains a number of instructive charts and convenient lists of states that have certain kinds of taxes, including those that have levied chain-store and general sales taxes. The chapter on tax trends is suggestive. As a popular presentation of a difficult subject, the pamphlet is well done.—FORD H. MACGREGOR.

The appearance of an excellent analysis of the *Statistical Procedure of Public Employment Offices*, by Annabel M. and Bryce M. Stewart (Russell Sage Foundation, pp. 327), is of timely importance in view of the co-operative federal-state set-up which is now being developed under the recent Wagner Act, and the likelihood that unemployment insurance legislation will spread rapidly during the next few years. Sponsored jointly by the International Association of Public Employment Services and the Committee on Governmental Labor Statistics of the American Statistical Association, this study presents the results of a field survey of the public employment services of six foreign countries—Great Britain, France, Germany, Switzerland, Sweden, and Canada—as well as of the federal and selected state services in the United States. Both the practical experience and the professional competence of the investigators are evident in their comprehensive analysis of how such technical matters as employment applications, placement, clearance, and classification of data are handled in the foregoing jurisdictions. But the most valuable part of the study,

from a constructive standpoint, is its concluding section, which projects a detailed plan for employment-office management in the United States. In the words of the authors (p. 271), this plan "has two distinctive features: first, centralization in state or federal bureaus of labor statistics of the statistical treatment of information reported by local employment offices; and, second, maintenance by each office of a daily record of information on all its transactions, and submission of a copy of this record to the central statistical bureau."—WALTER R. SHARP.

*The Constitutions of Iowa* (State Historical Society of Iowa, pp. 382) is a revised and enlarged edition of Professor B. F. Shambaugh's *History of the Constitutions of Iowa*, published in 1902. The present volume commemorates the hundredth anniversary of the establishment of civil government in the country west of the Mississippi now comprising the state of Iowa. The decade from 1836, when the Territory of Wisconsin was established, to 1846, when Iowa became a state, is a rich field for the student of early Western political institutions. The influx of population, the influence of dominant personalities, and the clash of the frontier spirit with necessary governmental restrictions are well illustrated in the discussion of organic acts and the agitation for establishment of a state government. The proceedings of the constitutional convention of 1844 have been used by the author with telling effect. The instrument drafted by that body was rejected by Congress and defeated twice by referendum in the territory. Another framed by a convention which met in 1846 was adopted by a small majority. In 1856, still another convention assembled and formulated the constitution under which Iowa lives today. The last chapter of the book, on "The Constitution of 1857 Amended," summarizes the seventeen amendments adopted since 1857 and gives some notion of the state's complicated amending machinery. The author has employed an attractive narrative style, and his book is not only valuable for purposes of reference but readable as well.—JOHN P. SENNING.

The history of an interesting organization up to February 1, 1933, is given by Arthur Hillman in *The Unemployed Citizens' League of Seattle* (University of Washington Press, pp. vii, 89). Three distinct periods followed each other: first, six months of organization and independent activity, a time when self-help really functioned; second, seven months of coöperation with the county in relief administration; and finally, six months of protest over the control of relief by the county commissioners and of conflict within the League. Mr. Hillman thinks that the political power of the League has been exaggerated, even though the men whom it endorsed for public office were for the most part elected. Except for state legislators, no persons from the organization's own ranks were elected.

The radical element would seem to have gained the upper hand. Mr. Hillman seeks to be impartial, quoting from both League members and representative citizens. Both sides deplore the political activities of the League, although for different reasons.—FRANK M. STEWART.

In the hope that the burden of relief resulting from widespread unemployment will stimulate the states to revise their generally inadequate and often antiquated poor relief laws, the Public Welfare Association has prepared and the Public Administration Service has issued as its Publication No. 37, *Poor Relief Laws; A Digest of Existing State Legislation* (pp. 25). The laws of each state are digested through 1932 (in some instances 1933), and the fact is brought out forcefully that while in this more enlightened age new and superior forms of public assistance—old age pensions, mothers' aid, pensions for the blind—have been provided, they commonly suffer from being grafted on to basically outworn systems dating from an era of ox-carts and tallow candles.

The General Welfare Tax League, with headquarters at 309 E. 34th St., New York City, has issued as its Bulletin No. 5 (mimeographed, pp. 12) a survey of uniform-tax provisions of state constitutions. Following comment on the unfortunate effects of such provisions under present-day conditions, the pertinent clauses of all of the state constitutions are quoted.

#### FOREIGN AND COMPARATIVE GOVERNMENT

*From the First to the Second Five-Year Plan* (International Publishers, pp. 490) is a symposium by J. Stalin, G. Grinko, V. Molotov, and five other well known protagonists of the Soviet régime. Among topics discussed are work in the rural districts, tasks of the first year of the second five-year plan, the technical construction of national economy, the advance of heavy industry, strengthening the defense of the U.S.S.R., and the financial program of the U.S.S.R. for 1933. Greatest interest attaches, however, to the first sixty pages of the book, in which is reproduced a report by Stalin on the results of the first five-year plan, presented at the Joint Plenum of the Central Committee and Central Control Commission of the C.P.S.U. on January 7, 1933. Asserting that the plan has proved of "immeasurable" significance as "an affair of the whole international proletariat," and interpreting its main task as that of transforming the U.S.S.R. "from an agrarian and weak country, dependent upon the caprices of the capitalist countries, into an industrial and powerful country quite independent of the caprices of world capitalism," the leader maintains that the program has been almost unqualifiedly successful in the domain of industry and has made great strides (even if more remains here to be achieved) in that of agriculture. "Notwithstanding defects and mis-

takes, the existence of which none of us denies, we have achieved important successes which call forth the admiration of the working-class all over the world."

Professor J. Lloyd Mecham's *Church and State in Latin America* (University of North Carolina Press, pp. ix, 550) covers a somewhat narrower field than its title might suggest, for it is essentially a detailed study of the relations of the Papacy and the local church authorities with the government of each Latin American state since the beginning of the revolt against Spain. Many readers will probably regret that the author does not give a somewhat more comprehensive picture of the Church's relation to the community as a whole at the end of the colonial period and today as a background for the study of political relations. It would perhaps have been impracticable to do so, however, without sacrificing other valuable material. After two introductory chapters, containing a discussion of the legal aspects of the right of patronage exercised by the king of Spain and an especially interesting account of the relations between the Papacy and the revolutionary governments during the war of independence, the author deals separately with subsequent relations between church and state in each of the Latin American republics. A considerable portion of the book is naturally devoted to the history of the religious question in Mexico. This section, however, will probably be of less interest to students already familiar with the main outlines of nineteenth century Latin American history than several other chapters which are less complete but which present facts not hitherto so readily available about the relations of church and state in other countries. Though the author is obviously handicapped by the lack of available source material, which makes it extremely difficult at this stage in the study of Latin American history to deal satisfactorily with any aspect of the development of the Latin American republics since the end of the Spanish régime, he has been able nevertheless to give a general picture of church-state relations in each country and thus to present a suggestive picture of the situation in Latin America as a whole. Controversial questions are discussed with evident impartiality. The book is an important addition to the literature in English on the recent history of the Latin American republics, because it covers ground thus far largely unexplored and presents a mass of valuable data which has not hitherto been readily accessible.—DANA G. MUNRO.

In his *Peiping Municipality and the Diplomatic Quarter* (Peiyang Press, pp. 146), Robert Moore Duncan gives a satisfactory treatment of the administrative organization of one of the world's largest and most interesting cities. Until recently China's capital, Peiping has had a separate

municipal organization only for a short time. For this reason, and because municipal administration is not highly developed in China, the system described is rudimentary. After a brief survey of the legal basis and general organization of the Peiping municipality, the author analyzes the organization of its four bureaus: public safety, finance, public works, and social welfare. Eight pages suffice for a description of the arrangements for self-government. The last two chapters are devoted to a consideration of the legal basis of, and the administrative organization for, that peculiar feature of Peiping—the Diplomatic Quarter. The maps included will be of distinct service to those unfamiliar with the physical appearance of the city. The limited scope of the study undertaken by Dr. Duncan, and his careful factual method of treatment, lend value to his work. It is to be hoped that equally competent students will interest themselves in making similar technical studies of China's governmental organization.—HAROLD M. VINACKE.

*The Definite National Purpose* (Toronto: Macmillan Co., pp. xvi, 161), by W. H. Moore, and *Recovery by Control* (Toronto: J. M. Dent and Sons, Ltd., pp. ix, 360), by Francis Hankin and T. W. L. Macdermott, indicate the two wings of political liberalism in Canada today. Mr. Moore, an exponent of the old school, believes that the only solution to the situation created by the "collective stupidities" of the past is "economic liberalism," meaning individual initiative bridled by competition. *Recovery by Control* is a more scholarly work, with a progressive outlook. The first part is devoted to a descriptive account of the extent to which government has intervened already in the economy of Canada—"one of the most socialistically organized countries in the world." This survey is probably the most valuable part of the book, for it has never before been available in a single volume. Upon such an analysis, the authors proceed with a plan for the future embracing self-government in industry presided over by a non-politically appointed economic council widely representative of productive industry, thus reconciling individualism with coöperation.—LIONEL H. LAING.

Drs. Oskar von Niedermayer and Juri Semjonow have collaborated in the production of the most recent volume in the *Schriften zur Geopolitik* series. This study, entitled *Die Sowjetunion, eine Geopolitische Problemstellung* (Berlin: Kurt Vowinkel, pp. 151), provides excellent material for serious students of Russian economic and administrative problems. In addition to the chapters devoted to transportation questions, planned economic life, etc., the authors provide excellent discussions of the question of nationalities, military geography, and the problem of local administrative areas. The analysis is uniformly vivid and incisive, and completely removed from all taint of propaganda. Bibliographical references are

plentiful, and the numerous maps and charts are masterpieces of clarity.  
—GRAYSON L. KIRK.

*Constitutional Issues in Canada, 1900–1931* (Oxford University Press, pp. xvi, 482), edited by Robert MacGregor Dawson, is an extensive and well-selected collection of “readings” drawn from parliamentary papers (British and Canadian), reports of commissions and imperial conferences, judicial decisions, magazines and newspapers, and sundry other sources. The materials are grouped in chapters devoted to the constitution, the governor-general, the cabinet, the House of Commons, the Senate, the civil service, the judiciary, political parties, and dominion-provincial relations; and each chapter opens with a brief introduction by the editor. Materials relating to imperial and foreign relations were found so embarrassingly rich that it was decided to present them later in a separate volume. In the lack of any recent or adequate textbook on Canadian government, Professor Dawson’s compilation should prove serviceable.

The Marxist interpretation of possibly the most important phase of Irish history is given in *The War for the Land in Ireland* (International Publishers, pp. 201), by Brian O’Neill. In his sketch of the agrarian movements, the author takes pains to show that the working farmers were betrayed by a succession of middle-class leaders. Yet the farmers themselves have never displayed any capacity for prolonged revolutionary action, so that the only hope lies in the emergence of a proletarian leadership. It is argued that the newly-formed Irish Communist movement must press forward to the social revolution, which will incidentally realize all of the long-cherished national aims, and only when Ireland has been turned into one big collective farm will the war for the land be ended.—JOSEPH R. STARR.

*The Tariff of Syria, 1919–1932* (Beirut: American Press, pp. 318) is the subject of an excellent field study by Professor Norman Burns, formerly of the American University at Beirut. The author is convinced that the Syrian tariff administration is in need of numerous reforms and his arguments for them are impressive. His illuminating account of the *paperas-serie* involved in the customs administration leaves one with the impression that this cherished French vice has thrived luxuriantly in the Levantine air. The book contains valuable statistical and documentary appendices.

Persons having occasion to use Canadian government publications will find helpful a pamphlet entitled *Author Entries for Canadian Government Publications* (pp. 6), prepared by James B. Childs of the Catalogue Division of the Library of Congress, and reprinted from *The Library Quarterly*, April, 1934.

## INTERNATIONAL LAW AND RELATIONS

Students of international administration and budding administrators may alike profit from the fortunate practice of Sir Arthur Salter in committing to paper organized and well-balanced reflections upon current problems with which he or the League of Nations has been faced. The latest volume appearing over his signature, *The United States of Europe, and Other Papers* (Reynal and Hitchcock, pp. 303), consists of memoranda written by him at various times during the thirteen-year period following the Peace Conference. The papers have been arranged and annotated in a most satisfying manner by W. Arnold-Forster. To those reading comfortably after the event, the striking feature of the memoranda is the acuity and skill with which Sir Arthur perceived the essential nature of the situations confronting him or the League. The memoranda take on added interest when one recalls that the author was regarded by many as the logical successor of Sir Eric Drummond as Secretary-General of the League. A series of not entirely fortuitous circumstances—the sudden death of Albert Thomas, the election with French approval of an Englishman to succeed him as director of the International Labor Office, and the insistence of the French that if the one plum went to Britain the other should go to France—may have cost Sir Arthur the position of Secretary-General, but they in no wise lessen the value of his comments. The book might with better reason have been called "The League of Nations," as but two of the memoranda deal with the United States of Europe. Other papers treat of the international character of the League secretariat, a proposal for a world economic conference, and the economic weapons of the League under Article XVI of the Covenant. The relation of the United States and the League is discussed realistically, yet with a view to securing the maximum assistance of the United States in problems requiring international coöperation. Arbitration, security, disarmament, sanctions, the Kellogg Pact, and the freedom of the seas all receive the attention of this busy international administrator at one time or another. His memoranda were prepared, as he admits, so that he might clarify his own thoughts, take such steps as were within his competence in accordance with some concept of wider policy, and sometimes "influence my colleagues or others whose views are likely to determine policy."—HERBERT W. BRIGGS.

At the request of commercial agents of the U.S.S.R., Edouard Lambert examined the legal implications of the Russian Goods (Import Prohibition) Act, enacted by the British Parliament on April 13, 1933. In *Une Fuite dans les Institutions de Paix* (Lyons: Revue de l'Université, pp. 71), he has presented the results of his study, together with an analysis of a research conducted by Giovanni Pacchioni into other aspects of this

famous British "embargo," which followed the trial in Russia of several English engineers on charges of espionage and sabotage. Unqualified approval is given to Pacchioni's conclusion that the act was contrary to accepted principles of international law. Basing his opinion upon a survey of comparative law, the author endeavors to show that the act was also in violation of generally accepted standards of private law, because of its virtual annulment of contracts made prior to its enactment. On account of the damaging effect of the embargo on the institutions of international peace, Professor Lambert urges the development of stronger legal ties among nations, particularly in relation to commercial activities.—  
NORMAN L. HILL.

If all authors who write books to support a particular thesis could do it as ably as Sir Arnold T. Wilson, there might be fewer criticisms of this method of writing—and more books like *The Suez Canal, Its Past, Present, and Future* (Oxford University Press, pp. xv, 224). It is the belief of the distinguished author that the present transit charges imposed by the Canal authorities are excessive, and he marshals a formidable array of statistics to show that the present rates are unnecessary, that they tend seriously to hamper trade, and that they are maintained largely in order to support the high dividends to shareholders and the inflated salaries paid to directors and other officials of the company. Although ample space is given to the defense of company officials, one feels that the case, as presented, is conclusive and devastating. The reader who is not particularly interested in the rate controversy will find highly illuminating the chapters dealing with the diplomatic and financial difficulties attending the construction of the canal. Bibliographical materials are abundant.—  
GRAYSON L. KIRK.

In the three problems submitted to the Naval War College in *International Law Situations, with Solutions and Notes*, 1932 (Government Printing Office, pp. v, 147), Professor G. G. Wilson asks exciting questions about the conduct of hostilities at sea. For example: States X and Y use force against each other without declaring war. States A, B, and C boycott States X and Y. What will boycotters' cruisers do about each other's merchantmen bound for hostile ports? About hostile merchantmen bound for boycotters' ports? About merchantmen of States not involved, on lucrative voyages to ports of intransigents X and Y? About an X convoy of such merchantmen? The judicious pouring is still one of new wine into old bottles; but the old bottles seem to be all we have—LLEWELLYN PFANKUCHEN.

Under the title of *The Constitutional Development of the League of Nations* (University of Kentucky, pp. 182), Professor Paul K. Walp has

traced the evolution of the relations between the Council and the Assembly. It is the author's conclusion that a decade of adjustment "has reduced what appeared to be great and disturbing problems in the relationship of the Council and the Assembly to matters of little concern to either." The manuscript was apparently completed before the Manchurian crisis and consequently is in many respects already obsolete. The reader cannot avoid annoyance over numerous examples of faulty proofreading and the inexcusable omission of all accent marks on French words.—GRAYSON L. KIRK.

*Italy's Relations with England, 1896-1905* (Johns Hopkins Press, pp. 170) is the fruit of a careful study by Professor James L. Glanville. Using copious documentation, the author traces the steps by which the Italian government surmounted the successive defeats and humiliations of the closing years of the nineteenth century and emerged by 1905 with a more fixed foreign policy and a more secure international position. The author thinks that much of the credit for this achievement should be given to the wise policies of the Visconti-Venosta.

Volume III (pp. xxiv, 833) of the monumental series entitled *Treaties and Other International Acts of the United States of America*, edited by Hunter Miller, has been issued by the Government Printing Office at Washington. Opening with the treaty of amity, settlement, and limits with Spain dated February 22, 1819, it presents the official texts of thirty-nine international acts, ending with the article added in 1835 to the Mexican treaty of January 12, 1828. The volume has been edited and printed with the same meticulous care as its predecessors, and will be no less welcome among students of diplomatic history and kindred subjects. There are two maps.

#### POLITICAL THEORY AND MISCELLANEOUS

In the main, Professor Charles A. Ellwood's *Methods in Sociology; A Critical Study* (Duke University Press, pp. xxxiv, 214), is a telling onslaught on the philosophy—mechanistic, behaviorist, objectivist, pragmatic, or however it cares to name itself—which claims to treat the phenomena and problems of the social sciences exclusively in accordance with methods of investigation regarded as appropriate to the physical and biological sciences. Since the beginning of the twentieth century, under the influences represented by Pavlov and Watson, a movement in this direction has made headway in American sociology. Professor Ellwood is a leading exponent of the counter-movement. He takes, however, a more moderate position than do his opponents, for he freely admits the value of behavioristic methods while with equal firmness denying their adequacy. This appears to the reviewer a reasonable position. The argu-

ment appeals to the different way in which we know or experience social processes as compared with physical processes. It points to the infusion of value-elements in human behavior and in the institutions which sustain or direct it. These value-facts are facts just as much as any others in the universe. They lie within the peculiar domain of the social scientist. If he ignores them because they do not fit in with a particular philosophy, he is surely not more, but much less, a scientist. When Professor Ellwood claims that behaviorism "affords no adequate basis for dealing with the non-material elements of culture," he is putting his case almost too modestly, for in the sense of the physicist there is no such thing as a *material* culture—it is a contradiction in terms. Unfortunately, the advocates of behaviorist methods constantly ignore the fact that they are taking a philosophical position which must be accepted or rejected on philosophical grounds. Too frequently, they are under the delusion that they are simply discarding philosophy for science and dealing solely and simply with the "facts." Professor Ellwood's book well reveals the character of this delusion. It should, however, be noted that the vindication of the subjective as material of science is another thing altogether than the establishment of the principle that science is properly concerned with ethical norms. The scientific hazards attaching to this principle are not sufficiently reckoned by Professor Ellwood. We must admit, with Professor Jensen (who contributes an introduction to the book), that "every social situation is shot through and through with value." We must also admit that all applied sciences, from navigation to criminology, exist because of human valuations. But in so far as they are sciences, they simply posit values as ends—they do not establish them as values—and are concerned with the system of means relative to those ends. Sociology may properly study the conditions of social harmony or adjustment, but no science can prove that social harmony is an ultimate good. The final goals of living are ours by virtue of what we are ourselves, neither to be refuted nor confirmed by any deliverance of science.—ROBERT M. MACIVER.

In *The New Capitalism* (Macmillan Co., pp. 229), James D. Mooney, a vice-president of General Motors, attempts to clarify economic issues by the use of ingenious physical analogies illustrated by charts, diagrams, and photographs. The law of supply and demand is ranked with Newton's law of gravitation; the gold standard is declared indispensable; and Mr. Mooney seeks the "new *laissez faire*" based on free and fair competition with the least possible government interference. Governments are "the world's worst economists." Socialism is "illusory," and "hallucination," and typical of loose thinking. The shorter work-week is a fallacious nostrum. Mr. Mooney's solution includes increased production, low prices, low tariffs, greatly decreased taxes. A more fundamental analysis

is *Our Economic Revolution* (University of Oklahoma Press, pp. 196), by Arthur B. Adams. Mr. Adams begins with the boom phenomena and seeks causes: "The major causes were excess profits and low wages and long working hours during periods of great technological progress." His study includes primarily four problems: (1) monetary policy and price stabilization; (2) agricultural relief and over-production; (3) public works and business recovery; (4) industrial control, business recovery, and fundamental reforms. To all recovery legislation, Mr. Adams applies the test of its effect on immediate and long-time purchasing power. He concludes that inflation, agricultural relief, and public works are of temporary significance and that permanent results must be looked for in the N.R.A. attempts at control of industry. The weakest part of Mr. Adams' theorizing is his lack of thorough analysis of the political problems involved in this last project. He urges that government narrow the range of private initiative by insisting on a wage level which will maintain adequate purchasing power, and on a limitation of profits which will prevent over-investment. Otherwise the government should mostly devote itself to enforcing fair competition and to protecting the consumer from monopoly prices.—HARVEY PINNEY.

*Observational Studies of Social Behavior: Volume I—Social Behavior Patterns* (Institute of Human Relations, Yale University, pp. xvii, 371), by Dorothy Swaine Thomas, Alice M. Loomis, and Ruth E. Arrington, is in the nature of a "progress report" on the development of experimental techniques to secure "simple indices of social interaction and to define individual and group behavior patterns in terms of these indices." The volume represents one stage of a larger program of sociological research under way at the Yale Institute of Human Relations. The group situations included in the studies reported range from a nursery school and kindergarten to a trade school and adult industrial setting. The limitations of such observational techniques as were employed and tested for their reliability are frankly admitted by the investigators, but they venture to express the belief that eventually "group patterns and individual deviates can be determined in such a way that differences between groups in various situations, as well as changes in a given group and in the individuals comprising it, may be studied." If this should become true, we may in the future be able to break down into their simple components some of the subtle differentia of political behavior which baffle present-day students of the art—or science?—of politics.—WALTER R. SHARP.

To the many difficulties encountered by Dr. George B. Cressey in collecting the data for his *China's Geographic Foundations; A Survey of the Land and Its People* (McGraw-Hill Book Co., pp. xvii, 436) was added downright calamity in the form of the loss of all of his maps and photographs when, early in 1932, the plant of the Commercial Press of Shanghai

was destroyed by the Japanese. The book was about to appear when the disaster occurred. Changing the title from "The Geography of China" to that given above, assembling photographs and other materials anew, and rewriting many of his chapters, Mr. Cressey was finally able to turn over the manuscript to an American publisher; and the best study of Chinese geography—both physical and human—known to the English language, or possibly any other, has at last become available. So huge are the areas to be dealt with, and so few the intensive critical studies of minute sections as yet made, that the author rightly declares it a matter of many years "before an adequate treatment will be possible." In the meantime, however, his book, presenting everything of major significance that is now known, will be of inestimable service, not only to geographers, but to students of Far Eastern history, politics, and economics. There is a very extended bibliography, and excellent maps, diagrams, and photographs illumine the text at every turn.

*La Fin du Principe de la Séparation des Pouvoirs* (Paris: Librairie de Recueil Sirey, pp. 129), by Marcel de la Bigne de Villeneuve, is a logical exercise in which clarity of definition does not entirely atone for sterility of content. The author examines Montesquieu's famous doctrine in the light of the familiar concept of indivisible sovereignty, and naturally concludes that the idea of separation of powers is not only inconsistent with fact but also logically unthinkable. He proceeds elaborately to demonstrate that its later exponents either fall into the same contradiction or pervert Montesquieu's meaning. On this scholarly background he urges the adoption of a "sociological" terminology which shall clearly distinguish the indivisible power of the state from its functions and services. The functions of the state are to be classified as independent (legislation and "government") or derived (administration and jurisdiction), and state services as "essential," "contingent," and "parasitic."—JOHN D. LEWIS.

Donald O. Wagner's *Social Reformers, Adam Smith to John Dewey* (Macmillan Co., pp. xvii, 749), will prove a useful collection of readings for the teacher of social theory or economic and social history. Dr. Wagner's definition of "social reformers" is broad enough to include Spencer, Leo XIII, and Alfredo Rocco, as well as such writers as Bentham, Paine, and Marx. In his selections he has avowedly attempted to stress his writers' "impact on subsequent thought," to retain the original flavor of their writings, and to indicate the evolution of ideas. He has succeeded admirably. Moreover, his brief biographical sketches are pointed, witty, and interesting; and his critical bibliographies are well selected. One might question the omission of certain writers, e.g., Ruskin, Morris, and Jefferson. One might regret that the space given Marx is devoted entirely to the *Communist Manifesto*, and that Veblen and Dewey are accorded

only a few pages each. But such criticisms, largely personal, can hardly detract from the value of this excellent collection.—JOHN D. LEWIS.

*Island India Goes to School* (University of Chicago Press, pp. 120), by Edwin Embree, Margaret Sargent Simon, and W. Bryant Mumford, represents the report of a survey of the educational system of the Dutch East Indies by a commission under the auspices of the Julius Rosenwald Fund. The report praises the East Indian educational system as "admirably planned and efficiently executed so far as the teaching of Western knowledge is concerned," but criticizes it for taking "so little account of the history and culture of the people themselves." While this criticism is not unwarranted, the authors would have given a fairer picture if they had laid more stress on some of the splendid work of the Dutch in preserving and developing indigenous culture; for this, in contrast with most other colonial systems, is one of the cardinal features of Netherlands' colonial policy. The report is an excellent one, yet it falls short of adequate recognition and analysis of many basic problems of educational policy in backward countries.—AMRY VANDENBOSCH.

A high school economics text by Professors Howard C. Hill and Rexford G. Tugwell should command more than passing interest. One such as *Our Economic Society and Its Problems* (Harcourt, Brace, pp. ix, 566), written in terms of a changing society and friendly toward experimentation in meeting the problems of our changing economic life, deserves special consideration. After a brief historical introduction, our present levels of living—poverty, comfort, and riches—are studied. The balance of the book is devoted to the problem of raising the levels of living and advancing human welfare by improving methods of production and the conduct of business, by redistributing income, by the wise use of income, by international coöperation, and by considering alternatives to *laissez faire*. In their treatment of controversial issues, the authors have happily preserved an objective and non-dogmatic approach.—BURR W. PHILLIPS.

*Over Here, 1914-1918* (Scribner's, pp. xxiii, 676), is Volume V of Mark Sullivan's *Our Times; The United States, 1900-1905*. Like its predecessors, the book pretends to be nothing more than a good grade of popular history. As such, however, it has its points, not the least of which is its panorama of war-time happenings as viewed from the vantage-ground of an experienced and intelligent journalist in Washington. A wealth of illustrations is about equally divided between photographs and cartoons.

Under the editorship of George H. Ryden, the Historical Society of Delaware has published *Letters to and from Caesar Rodney, 1756-1784* (University of Pennsylvania Press, pp. vi, 482). The collection, bringing together all of Rodney's letters which have public interest, will be serviceable to students of American institutions and politics during the Revolutionary period.

RECENT PUBLICATIONS OF POLITICAL INTEREST  
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CHARLES S. HYNEMAN

*University of Illinois*

AMERICAN GOVERNMENT AND PUBLIC LAW

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- American Public Welfare Association.* Poor relief laws. Pp. 25. Chicago: Pub. Admin. Service.
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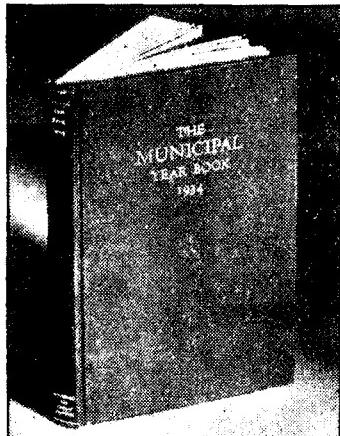
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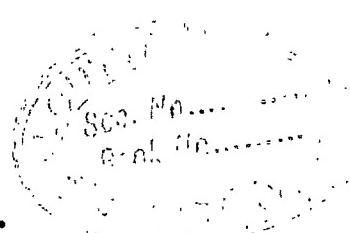
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## THE RÔLE OF THE SENATE IN TREATY-MAKING: A SURVEY OF FOUR DECADES

DENNA FRANK FLEMING

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The action of the United States Senate upon the large majority of treaties laid before it has been comparatively perfunctory and without important result. Four-fifths of all the treaties submitted to the Senate have been approved by it without any change whatever. Twenty-one per cent have been altered in the Senate, for the most part by changes of words or clauses that later passed the scrutiny of both the President and the foreign powers concerned. Of the 152 treaties amended by the Senate, only one-fifth have been changed so seriously as to compromise or destroy the international agreement proposed. Likewise, the failure of 62 treaties to be approved by the Senate in any form has had serious consequences in not more than a fifth of the situations resulting.<sup>1</sup>

Moreover, while all kinds of treaties have incurred the Senate's displeasure, it has consistently emasculated only one type, i.e., those for the pacific settlement of disputes. It is upon the Senate's action on this class of treaties that opinion as to the usefulness of its rôle in treaty-making must divide. To those who believe that a policy of national isolation can and should be maintained, the record of the Senate is not disturbing; it is highly praiseworthy. To others who are convinced that a progressively developing machine civilization requires strong and effective international controls, the negations of the Senate are much more destructive than conservative.

<sup>1</sup> For the figures used, see R. Dangerfield, *In Defense of the Senate* (Oklahoma Press, 1933), pp. 151, 252.

## I

At the present time, it seems strange to recall that in the far off year 1890 the Senate passed a resolution urging the President to develop arbitration as a means of settling disputes that could not be otherwise adjusted. But when the Executive responded with the Olney-Pauncelote Treaty with Great Britain, in 1897, senators who disliked the Cleveland administration, or who distrusted arbitration, combined with those who hated Great Britain to change the treaty beyond recognition and then defeat the remnant.<sup>2</sup> They refused to arbitrate any question which the United States might later consider to affect its "honor," its "foreign policy," or its "domestic policy." Lest these expansive loopholes should leave a chance for a serious arbitration, it was further voted that no arbitration should proceed until the *compromis*, the detailed agreement whereby every special arbitration tribunal is set up, should have been approved by two-thirds of the Senate. That is, the Senate would not agree to arbitrate at all. Instead of promoting arbitration, the Senate impeded it by elevating every *compromis* into a treaty and giving any group of senators the right to try to block it.

Seven years later, a reassertion of this right killed the Hay arbitration treaties of 1904, President Roosevelt declaring that "we had better abandon the whole business rather than give the impression of trickiness and insincerity which would be produced by solemnly promulgating a sham." Roosevelt was, however, persuaded by Secretary Root, in 1908, to yield to the Senate in this respect, a surrender which produced arbitration treaties in name only. The political scene having shifted, Roosevelt became the bitter opponent of the more effective Taft arbitration treaties of 1911, and with the assistance of Senator Lodge, secured such amendment of these treaties in the Senate that President Taft dropped them.<sup>3</sup>

The Senate thus preserved for us inviolate, down to the year 1914, a full-fledged membership in that anarchy of sovereign

<sup>2</sup> Final action was not taken until May 5, 1897, after the McKinley administration had added its endorsement to the treaty.

<sup>3</sup> The attitude of the senators from eight Southern states toward arbitration treaties has been determined largely by the possibility that the repudiation of bonds by their states, issued principally during the "carpet-bag" period and largely held abroad, might be called into question. Cf. C. P. Howland, "Our Repudiated State Debts," *Foreign Affairs*, Vol. 6, pp. 395-407 (Apr., 1928).

nations in which every state retained the right to be the sole judge of its own disputes and to impose its will upon any weaker sovereign. Strange as it now seems, and perhaps must continue to seem for some time, nations whose very existence depended upon the preservation of law within their own borders insisted upon being above all law themselves.

In this situation it was inevitable that no nation having strong neighbors could feel secure. The most powerful of peoples, living at the center of our Western civilization, drew together in two rival alliances and armed incessantly to keep the balance of power from tipping against them. Both could not succeed, but they created a situation in which it was impossible to restrain the military machines whenever any one of the Great Powers felt itself seriously offended. Once the Austrian cabinet had decided to dispose of Serbia, in July, 1914, it was not even possible to secure a conference of statesmen in the hope of keeping 350,000,000 people from flying at each other's throats.

## II

Before other hundreds of millions were drawn into the struggle that resulted, the American people contemplated it in all soberness and saw with clearness the plain lesson that it taught. The active, pugnacious mind of Theodore Roosevelt reaffirmed with vigor the conclusion he had reached years before—that the forces of the peaceably inclined nations would have to be organized behind the peace. The calm, judicial mind of William H. Taft wrestled with the issue through many weeks and arrived at a like decision. The rigidly disciplined mentality of Woodrow Wilson came early to the same conclusion, although it was two years before he stated the fact publicly. The cold, cautious intellect of Henry Cabot Lodge saw no other way for the peace to be kept, and said so. Whereas Roosevelt had given us the plain and prophetic choice of "Utopia or Hell," Lodge affirmed flatly that the problem could be solved in no other way, and added, "not failure, but low aim is crime."

No crime could have been greater than for the statesmen in power to fail to organize the nations against war at the close of the tragedy of 1914–18. The leaders of the great nations might be forgiven for drifting once into disaster, but no defense before history could have been found had they failed to make an effort to

prevent its repetition. Neither is it to be doubted that the memory of President Wilson would have been execrated by posterity, as well as by his contemporaries, had he failed to make a supreme effort to create a federation of nations before the opportunity slipped by. The federation which he achieved was in most respects weaker than those Articles of Confederation which broke down before our present federal Constitution was adopted, but it did contain the minimum obligation to take some common action against any nation which disrupts the peace.

Without that essential provision, no effective international organization was possible; yet the League of Nations was at once assailed in the United States Senate as a dangerous super-state. Before a line of the League Covenant had been written, the prospective leaders of the Senate agreed that whatever was adopted should be attacked with reservations which would in time emasculate it. Time was necessary. Senator Lodge has recorded in his last book, *The Senate and the League of Nations*, that the leaders of American public opinion of every kind were so strongly for the League Covenant that a frontal attack on it was impossible.<sup>4</sup> It was, therefore, whittled away by degrees in a war of attrition that lasted two full years, during which the country resounded with debates as to whether this phrase or another was the proper one to qualify this clause or that sentence. To foreign observers, it must have seemed that the very fate of the American Republic depended on one shade or another being given to some disputed words; yet the world listened in amazement throughout the long debate without a single nation making the fears expressed here its own. By November, 1920, forty-two nations had entered the League.

The repudiation of the League by the strongest power that had ever existed did not destroy it at its birth, as all Americans expected, but it inevitably and decisively weakened its authority from the start. With the United States refusing any responsibility for the peace, standing upon its unrestricted right to trade with belligerent nations, and demanding a navy second to none, any strong restraining action upon a nation which insisted upon breaking the peace became quite unlikely—a fact which was duly noted in Tokyo, and by a dozen new, weak, and dismembered nations in Europe, created largely by the force of our arms.

<sup>4</sup> Pp. 147–148. See also the testimony of George Harvey in *Henry Clay Frick, the Man* (N. Y., 1928), p. 325.

Our abstention from the League left us also engaged in an armament race with the navies of the Anglo-Japanese Alliance, which we might win only at prohibitive cost. To stop this drain, the Senate directed the Executive to call those nations to Washington. They were summoned, the Anglo-Japanese Alliance was broken, and the competitive building of battleships was stopped. But in achieving this result we gave Japan undisputed control of the Orient, without contributing anything whatever to the restraints which the League of Nations might place upon the ambitions of the Japanese militarists.

### III

While the world was being told by the United States to start down the steep incline again, if it liked, Secretary Hughes defied the dictum of senators that it made no difference who was Secretary of State by proposing that we join the World Court. Temerity indeed! But if Mr. Hughes accomplished nothing else, he gave the Senate the opportunity to do two things. It rose to its full height and gave a supreme demonstration of its reservation-making art, and, at the same time, achieved the ultimate in proclaiming its refusal to accept any method for settling disputes other than that which had just resulted in the death of ten million men and had torn the fabric of world civilization almost beyond repair.

After three years of refusal to notice the proposal to adhere to the World Court, the Senate finally considered the already numerous reservations which Secretary Hughes had prudently prepared and proceeded to smother caution with super-caution. First it was proposed that the United States refuse to be bound by any advisory opinion of the Court, unless we had joined in asking for it. But after senators had heard some rumors, this was not enough. It was then gravely decreed that the Court should not *give*, without our consent, any advisory opinion in which the United States either had or *claimed* an interest.

Future generations of Americans may well discover with amazement that in only one country in the world was an issue made of accepting membership in the World Court. What must their chagrin be when they learn why American senators kept their country out of the Court during its formative period, when every broad consideration required the establishment of its influence! Was it because the Court had the power to compel us to send to it

every dispute, trivial or vital, that we might become involved in? No, it was not that. We might have belonged to the Court indefinitely without submitting a single case to it. The alleged purpose of our decade of abstention has been to forbid the Court so much as to consider, without our consent, any question in which the United States either has or *claims* an interest. What a supreme assertion of the right to be our own judge in the remotest contingency! No possibility of the Court delivering a judgment against us that we had not joined in asking for has ever been alleged—only the chance that, if the Court reversed its carefully adopted policy, we might sometime be displeased by an advisory opinion that would be binding upon nobody.

Strangely enough, also, in all the recorded Senate debates, only one senator, Mr. Bruce of Maryland, ever warned that terms of such highly suspicious coöperation might not be accepted by the other powers with alacrity. The general assumption was that they would swallow anything "to get us in." The forty-eight nations belonging to the Court were therefore invited, in forty-eight separate notes, to send in their acceptances of the Senate's conditions. It cannot be recorded that they stampeded to do so. The Senate had finally acted in January, 1926. Two years later, five of the members of the Court had accepted its terms unconditionally. They were: Cuba, Greece, Liberia, Albania, and Luxembourg. Six important states, including Canada and Brazil, did not reply at all, and sixteen merely acknowledged receipt of the Senate's grudging offer, without saying what they thought of it. It is important to remember that the positive acceptance of the Senate's terms by every one of the forty-eight members of the Court was necessary.

Recognizing the impasse existing, twenty-two of the League states held a conference to try to find a way out, without improving very much the feeling of injured dignity on this side. This conference actually had the temerity to accept the Senate's reservations *with reservations*—an action so astounding that we are still attempting to convince the Senate that it actually did not happen. But mediations and formulas and the promptings of an all but universal public opinion, voiced in every conceivable manner, have not produced the desired result.

Yet, in all reason, why should any other reaction to the Senate's condescension have been expected? The shock had not been suf-

ferred before simply because the Senate's reservations to a great multilateral treaty had never got outside of the country. One has only to consider the situation which would arise from half a dozen or half a hundred parliaments trying to attach reservations to a treaty, many of them conflicting. And if one parliament can tinker with a multi-party treaty, all can. Fortunately, other legislative bodies have not adopted widely the Senate's custom of subjecting treaties to legislative routine. If they should do so, the adjustment of vital international issues, increasingly complex and requiring the agreement of many peoples, would be brought to a standstill. The legislative alteration of multilateral treaties is a game that only one parliament can play, or at most a small number, unless a paralyzing series of conferences is to be called to consider the reservations and amendments proposed by the various parliaments.

## IV

Following the World Court fiasco, what could any secretary of state do to signify to the other peoples that a large minority of thoughtful Americans were deeply restless and uneasy under a policy of inert drifting toward whatever cataclysmic clash of supreme national wills an undermined League of Nations might not be able to prevent? But one conceivable attempt remained to be made—to try to persuade all the nations to sign a pledge to be as good as our Senate conceived us to be. A precedent for such a final effort existed. Under the thunder-cloud of the Great War itself, the Senate had permitted the Bryan commission-of-inquiry treaties to be approved, one hot afternoon in August, 1914, when forty-five senators were absent, including Mr. Lodge, who called the treaties "fatuous." It may be that they were fatuous, since they called for no positive action whatever. But they contained a promise to wait awhile before going to war, a pledge later made almost universal by Article 12 of the League Covenant. Perhaps the nations would now swear not to go to war at all. They did—sixty of them, in the Pact of Paris—that small document in which the fabulously wealthy United States of 1929 proclaimed once more that while it disapproved of war as a method of settling disputes, it would not take the slightest step toward establishing and enforcing other means of adjusting international frictions.

## V

Thus repeatedly assured, the Japanese army soon struck in Manchuria. And when the League of Nations failed to restrain

Japan from taking the law into her own hands, the bolt of Germany from Geneva and all its processes was sure to follow. What France and Britain condoned in Asia they could not prevent in Europe.

We thus appear to be back to the law of the jungle in international relations. Every nation that covets its neighbor's lands is now free again to take them; every people must again depend for its existence upon arms and alliances; new balances of power must arise in Europe and in the Pacific, and when one of these balances becomes fairly even, a new deluge must come. There is no help for it; it must happen again. Innumerable legions of the young must die and noncombatants with them. Hate and greed and fear must rule many nations until the new day of reckoning arrives—and long after it. Toleration must be further extinguished while liberty and democracy are taken from some of the peoples which still cling to them. Peoples but yesterday freed from oppression must return to subjection; nations that wish only to live in peace within their own borders must succumb to those which breed for military purposes. New religions for the worship of the State must be set up; social systems themselves must be shattered again and economic systems again destroyed, in order that new maps may be drawn that will create as much injustice as now exists—in all probability more.

If this hopeless cycle is unavoidable, then the United States Senate is justified in lately refusing once more to permit an arbitration treaty to be concluded, even with the nations of Central and South America. On January 19, 1932, after a delay of three years, the Senate nullified the General Treaty of Inter-American Arbitration by reasserting again the right of one-third of the Senate to reject the *compromis* of any proposed arbitration. Having thus emptied the treaty of its force, the Senate then added another reservation excluding any controversies that might arise under pre-existing treaties. This postscript made it certain that the Senate would not be troubled with the scrutiny of proposed arbitration agreements for many years to come—not until a new structure of treaty relations should be slowly created with all Latin America.

If the theory of the totally sovereign state is to rule and ruin the earth long after the agricultural state, in which it was possible to practice it, has disappeared, then an unchanging Senate is to be taken for granted. Likewise the disorganization of world trade

by general wars, and the dislocation of the economic machinery of all industrialized nations for years to come, is to be expected. All that we can do is to convince ourselves that we can avoid military participation in the next struggle, in spite of the fact that we have been drawn into every world war that has occurred since Jamestown was settled—each time more completely against our will. Should we be able to avoid direct participation next time, we shall have to look forward, as in 1815 and in 1919, merely to post-war boom, collapse, vast unemployment, panic, despair, painful reorganization, slow recovery.

Is such a dismal fate inevitably in store for us? No one who has any faith in the evolution of human institutions can believe it. Of the seven world powers, the four greatest have every interest in standing together to prevent the violent disruption of world order. Only the three lesser of the chief powers yearn to subdue and rule other areas and peoples. There is no reason why they should be permitted, either collectively or singly, to put all the other peoples in jeopardy. This is the more clear when the fifty smaller nations, many of which are far from weak, are considered. We may range the globe as we will without discovering more than three or four small states that are bent upon changing their boundaries by force. The great family of nations need not submit to having its peace and prosperity destroyed by a handful of dissatisfied peoples, little or big, and it will not do so indefinitely. Sooner or later, we shall give to a League of Nations and a World Court enough power to adjust national frictions and grievances, even to the extent of determining boundaries in certain inflamed areas.

In a progressively mechanized world, there is no alternative to a federation of nations strong enough to keep the common peace and to administer enough justice to preserve it. It is for those who still think that the destructive phases of our machine civilization can be avoided by any nation acting alone to rejoice in the eclipse of the League of Nations. Universal economic decline has not halted the amazing progress of inventive genius in developing the new weapons of war.<sup>5</sup> We cannot conclude that man will permit the machines which should give him a life of richness and plenty to destroy him by agonizing stages instead.

<sup>5</sup> George W. Gray, "Unceasingly War Forges Deadlier Arms," *New York Times Magazine*, December 10, 1933, pp. 6-7.

Neither can we avoid questioning whether it will ever be possible to secure world stability, or a mitigation of the suicidal economic nationalism which, in the absence of political security, is strangling all the nations, without the strong leadership of the greatest nation of all. It is not a reasonable proposition that in an ever-shrinking, increasingly interdependent world, order can ever be attained without the steady partnership and leadership of its most powerful unit.

It is true that the alternative possibility of attempting to suppress our world trade and resign from world economics, as we have tried to resign from world politics, is in the minds of all of us. It would be supremely comfortable to be able to let world wars go by on one side and global economic depressions on the other, but no one has yet explained how new employment for a large part of the populations of our immense seaports could be found in the interior. Reviving American capitalism, already grasping at foreign trade stimulants, will hardly give up all of its foreign credits and at the same time provide the funds for settling millions of city dwellers on the land, especially when the present supply of farmers already produces a suffocating surplus of everything agricultural—a surplus that would become stifling indeed should our exports of cotton and tobacco, wheat and meat, be subjected to further drastic curtailment.

We have tried "normalcy" as an escape from the disillusionments of war and have drifted from it into an uncharted sea of distress as wide as the earth itself. We have clung to political isolation for a decade and a half after it had irrevocably ceased to exist, only to discover that in a world of agonized nations we have had the melancholy distinction of suffering the most acutely. Yet, amazingly enough, it is still said that to try the other path means becoming involved in international "politics." It does. It means that where matters of world concern are constantly discussed the United States shall be present as a matter of course; it means that when a potential threat of war cannot be prevented from becoming actual, we shall assert our stake in peace in concert with others; it means that we shall have to meet intrigue and trickery and sordid selfishness as we are compelled to meet them habitually in our domestic politics. In a world economically unified, we can no more renounce international politics on the ground that it is unclean than we can dispense with national politics.

## VI

For the moment, the majority of the American people undoubtedly approve the Senate's forty-year record of suppressing treaties for the settlement of disputes without war, believing that, after all, such commitments can and should be avoided. It must be recognized, too, that, in the absence of powerful executive leadership, this frame of mind may persist until after the next Armageddon. But whenever we find ourselves ready again strongly to support the executive in setting up alternatives to war, as we did in all the cases considered above, we are quite certain to find ourselves immobilized by that ambiguous clause of the Constitution which says that the President shall "have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur."

In framing this provision, the makers of the Constitution did not intend to set up two independent authorities to contend for control of our foreign policy. On the contrary, they fully intended the Senate to serve as a confidential, executive council to the President. President and Senate were expected to act as a unit, especially in the early stages of treaty-making. But when on the first occasion the Senate rebuffed President Washington and refused to discuss a treaty in his presence, a split of the treaty-making power occurred which grows more serious as the necessity of making important treaties increases. The President has clearly established his right to negotiate treaties and the Senate to act on the completed draft as it sees fit.

Having lost its share of the initiative in treaty-making, the Senate now tries to restore its control over our foreign affairs, in an area of increasingly active world politics, by vetoing every treaty that would increase the President's power and discretion in directing foreign policy. From the viewpoint of the Senate, it is only preserving the right of the people's representatives to prevent the Executive from taking rash steps, even in the effort to promote peaceful settlements. In the view of those who believe that by avoiding leadership in international organization we are inviting a collapse of the white race itself, the Senate has balked our best statesmanship for four decades and is likely to do so indefinitely.

Let us attempt to appraise the situation clearly. No believer in democracy can deny the right of the national legislature to exercise some control over foreign policy; nor can he doubt that such

control makes for international peace and order. Democracies can force reluctant executives to war, but they are incomparably less likely to do so than is a dictator to fire the emotions and imaginations of his youth to the point of striking for power, or vengeance, or profit.

Moreover, in spite of all the ridicule that has been heaped upon open diplomacy, the peoples of our fellow democracies are everywhere searching for some means of checking adventures of their foreign offices that point toward war. In the countries that have the parliamentary form of government, their task is much easier. Recent studies demonstrate that both in Great Britain and throughout the British Dominions the opposition parties are slowly compelling their governments to permit debates on issues of foreign policy and to explain to the country, partially at least, in what direction they are going.<sup>6</sup>

On the Continent, most of the older parliaments have supplemented the normal control of the chamber over the ministers by creating standing parliamentary committees to advise upon, and even to supervise, the conduct of international affairs, especially when parliament is not in session. Norway, Sweden, Denmark, Belgium, Holland, and Czechoslovakia have such committees<sup>7</sup>—six small democracies, incidentally, that will henceforth pursue a precarious existence if the plans of a couple of omnipotent dictators mature. Similar committees existed also in the German and Austrian Republics.

The effectiveness of these bodies has varied, but in all of the countries here considered they have contributed toward a unified foreign policy. The parliamentary system, of course, favors such a result. The members of these committees have an identity of interest with the cabinet. They stand or fall together. The cabinet enjoys no absolute security of tenure, as does our President, and the parliamentary committee is not, like the Senate foreign relations committee, made independent of the Executive by long, fixed terms and election from one-party states.

This fundamental difference makes the creation of a workable

<sup>6</sup> Eugene P. Chase, "Parliamentary Control of Foreign Policy in Great Britain," in this REVIEW, Vol. 25, pp. 861-880 (Nov., 1931); A. Gordon Dewey, "Parliamentary Control of External Relations in the British Dominions," *ibid.*, Vol. 25, pp. 285-310 (May, 1931).

<sup>7</sup> A. J. Zurcher, *The Experiment with Democracy in Central Europe* (N. Y., 1933), pp. 206-217.

and sympathetic relationship between our legislature and executive in determining foreign policies immensely more difficult, but correspondingly imperative. If we are fortunate enough to get a secretary of state who is both an experienced and astute politician and a statesman, and if we happen to secure a president who has the same rare combination of qualities, the coöperation of the Senate foreign relations committee is very likely to be secured—until the close of the President's term, when patronage and other grievances incidental to the rule of a strong executive have accumulated.

The last two years of the tenure of any Administration, moreover, stand a good chance of being played out with the foreign relations committee in the hands of the opposite party. Especially when senators who have resented their exclusion from power, who hate the President and burn with desire to supplant him with one of their own kind, find themselves again in control of the Senate, nothing can prevent any constructive treaties which he may propose from being torn to pieces. The position of partisan Senate leaders is made impregnable by the fact that on September 7, 1787, one or two men in the Constitutional Convention swung the decision in favor of two-thirds-majority action on treaties.

The number of peace treaties rejected by a minority of the senators present has not been large, but the shadow of the minority that can frustrate every proposal hangs over each attempted agreement from its birth. It even prevents desirable treaties from being conceived. It now makes even a strong president extremely reluctant to approach the Senate. It compels him to rely upon executive agreements and quiet understandings, thus driving our diplomacy underground. To quote the informed appraisal of D. C. Poole: "Most of the cramping effect of the present constitutional arrangement upon our international conduct arises from mere apprehension on the part of the Executive—from the brooding sense of irrational restraint which settles upon the minds of successive Secretaries."<sup>8</sup> In a world of nations that are patently groping toward organization or extinction, the lot of a secretary of state who can do little but read Washington's Farewell Address is not to be envied. No statesmanship need be expected from any foreign secretary who must tip-toe about in mortal dread of the thunders of any popular senatorial censor.

<sup>8</sup> "Coöperation Abroad through Organization at Home," *Annals of Amer. Acad.*, Vol. 156, pp. 136–137 (July, 1931).

## VII

If perchance a treaty for the regulation of important international frictions, political or economic, is ventured, it is not alone the one-third who can defeat a treaty outright that is to be feared. Any small band of senators can so alarm the friends of the compact in the Senate that reservations and amendments will begin to be conceded by simple majority votes, in the hope of preventing a handful of objectors from weaning away enough timid senators actually to threaten the treaty itself.

Worse than this, the rules and customs of the Senate have so elevated every senator into a sovereign that the Senate is reluctant to overrule any member who is a strong personality. Days will be consumed in trying to mollify him and thus achieve the unanimous consent which is so dear to every gathering of sovereigns. It always tends to seem much the lesser of evils to concede him a reservation than to coerce him by invoking the mild form of closure which makes every senator feel conscious of imperilling his own sovereignty. A galaxy of sovereign senators dealing with a myriad of sovereign nations is indeed a combination ideally fitted to perpetuate the rule of lawless force in world affairs.<sup>9</sup>

There will always be senators who see no reason why a treaty, even a multilateral agreement, should not be submitted to the usual legislative process. The Senate is full of lawyers, and enough of them are always ready to handle a treaty just as they would handle a post-office appropriation bill. Every senator, too, can

<sup>9</sup> Since this paper was written, the Senate has made a very significant concession to the necessities of international agreement. It permitted to become effective, on June 12, 1934, a law giving the President the power to conclude reciprocity tariff treaties, raising or lowering existing duties as much as 50 per cent, and to put them into force without reference to the Senate. Temporarily at least, during a specified period of three years, the Senate has abdicated its right to approve an important class of treaties. If the Administration was to have any real power to attempt a revival of our international trade, such a surprising surrender of authority was indeed imperative. It was vital equally to negotiating with executives having still broader powers over tariffs and to putting the agreements made into force. Throughout our history, but one third of the reciprocity treaties sent to the Senate had been approved by it. No other group of treaties had a higher mortality rate. No other kind of treaty so quickly alarms local interests and makes them vocal in the Senate. The possibility of getting a large number of tariff-bargaining treaties through the Senate was therefore almost non-existent. If such treaties are to be of value, they must make many concessions in rates, concessions that would produce endless obstruction and log-rolling in the Senate. The Senate has recognized frankly that if the tariff was to be revised in the national interest, the Executive would have to do it.

discover details that he believes can be improved upon, and some always begin at once. "The treaty is not perfect, is it?" they demand; and immediately the work of perfecting it begins. Much of this labor of perfection is honest and well-meant, but too often it rests upon the mistaken assumption that every treaty should be the best conceivable bargain for the United States, whereas it can never be more than the best bargain attainable under the circumstances. Other nations are concerned, and where serious matters are to be adjusted, the result can never be perfectly satisfactory to all of the signatories or to every senator.

We need nothing more than—and perhaps nothing is so immediately practical as—the setting up of some new liaison between the Executive and the Senate which will incline the latter's leaders toward urging upon senators the acceptance or rejection of proposed treaties without amendment. Why should senators insist upon withdrawing, by means of reservations, the concessions which made agreement possible between the negotiators? The attempt thus to reopen the negotiations by means of an ultimatum is subversive of any constructive foreign policy. Equal powers of control over foreign affairs by two independent bodies are neither desirable nor possible. Why should the Senate continue to depreciate its true function? "In all our high places, there are few rights of honor or importance equal to that of a United States senator to sit in judgment upon the greatest of contracts proposed for the United States, and to register his decision as to whether its terms are on the whole for the benefit of the nation. We do not undervalue the veto powers of the President or of the Supreme Court. Why should that of the Senate over treaties be considered as anything less than a vast and significant power?" If the fears of small groups of senators must be recorded, they can be set down in "documents not attached to our treaties, as in the committee report on the Paris Peace Pact, or in statements clearly calling for no action on the part of other signers, such as the anti-secrecy declaration in the resolution of consent to the London Naval Treaty."<sup>10</sup>

## VIII

What, finally, is to be our attitude toward the power of one-third of the Senate to reject any treaty? Is the Senate so im-

<sup>10</sup> D. F. Fleming, *The United States and the League of Nations, 1918-1920* (New York, 1932), pp. 506-507.

pregnably entrenched that no mitigation of its power over treaties can ever be achieved? The rapidity and the sweeping nature of recent constitutional changes, both at home and abroad, would not argue for the immortality of the Senate's treaty prerogative, especially since it remains a thing unique in all the earth. During 150 years, only one people has ever thought it a reasonable thing to try our plan of giving one-third of one house of the legislature control over treaties. That nation is Liberia.

Few logical reasons can be found for resisting the admission of the House of Representatives to the scrutiny of treaties. Nothing is more likely, either, to induce a change of the Senate's attitude toward treaties than the further growth of the already widespread desire for recognition of the House in treaty-making. If this demand spreads sufficiently, the Senate may at least be led to consent to the approval of treaties by a simple majority vote of its own members.

A situation in which the foreign policy of a great nation is compelled by the obstructive power of one-sixteenth of the national legislature to remain negative must be considered as temporary in a world in which constantly accelerated change is the one certain law of life—a law which will operate still more remorselessly after the next general war than it does today, if that war is permitted to occur.<sup>11</sup>

<sup>11</sup> The newest examination of the results of the treaty-making clause of the Constitution is contained in W. Stull Holt, *Treaties Defeated by the Senate* (Baltimore, 1933). In the concluding paragraph of his study, Mr. Holt characterizes the existing system as one which "produces impotence and friction," and warns that "a deadlock between the President and the Senate over a treaty involving a really critical foreign problem may end in ruin" (p. 307).

## THE POLITICAL PHILOSOPHY OF HENRY ADAMS

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The use of superlatives is always dangerous, but it may be said, with little exaggeration, that Henry Adams was the Aristotle of America. His similarity to the great pupil of Plato, however, lies not so much in his influence upon subsequent thinkers as in the astonishing range of his interests and studies. Probably no other man of recent times has made such an ambitious effort as he to explore the entire realm of human knowledge and to deduce from it some logical answer to the riddle of the universe, with particular reference to the destiny of society. At a time when specialization had become the order of the day, and when it was considered presumptuous for a man to attempt to master more than one tiny segment of knowledge, he ranged the whole field like a titan, concerning himself with history, politics, economics, astronomy, physics, chemistry, mathematics, geology, anthropology, and psychology.

To the casual reader, Adams is known chiefly as the writer of a charming and instructive, though possibly over-rated, autobiographical narrative. To scholars, he is known as an historian of the first rank, as a pioneer in the effort to develop a true science of history, and as the man who introduced the seminar method of teaching history into American universities. To a few, perhaps, he is known as a scientist, novelist, globe-trotter, and student of medieval art and architecture, but for some reason, he remains largely undiscovered, or at least unappreciated, as a political thinker. The popularity of *The Education of Henry Adams* has almost completely overshadowed his historical works, such as *John Randolph*, *The Life of Albert Gallatin*, and his nine-volume *History of the United States during the Administrations of Jefferson and Madison*. His political novel, *Democracy*, which was published anonymously, had been largely forgotten before he was revealed as its author, and his *Tendency of History*, and *The Degradation of the Democratic Dogma*, which contain the best expositions of his theories of history and society, are such tedious reading that they have received relatively little attention.

It may be objected at the outset that Adams was interested in the philosophy of history rather than in political theory. But in

the words of Harold Laski, "a true politics, . . . is above all a philosophy of history."<sup>1</sup> If we are to believe his own account, Adams spent the better part of sixty years puzzling over the political phenomena that came within his range, regarding them in the light of history and science, and trying to fit them into some intelligible scheme of life. For the greater part of this period, he confessed complete bafflement. The facts simply could not be made to fit any tenable theory. But with a passion for unity almost as great as that which inspired the medieval churchmen and the apologists for the Holy Roman Empire,<sup>2</sup> his mind refused to accept chaos as the normal state of affairs in society, no matter how much so it might appear upon the surface. His studies in the sciences had convinced him that there is some degree of order in nature, and he refused to believe that man is wholly independent of natural laws. Near the end of his life, he thought he saw the relationship existing between human society and the physical universe. It was only a tentative theory at best, and a very pessimistic one at that, but it brought all cosmic phenomena into a unified system, and helped to explain the sequence of historical events.

At the risk of over-simplification—a risk inherent in all epitomes—let us recapitulate Adams' philosophy of history, and then examine its political implications. It may be said to take its departure from the second law of thermodynamics, as enunciated by William Thomson (later Lord Kelvin) in 1852, which is as follows: (1) There is at present in the material world a universal tendency to the dissipation of mechanical energy. (2) Any restoration of mechanical energy, without more than an equivalent of dissipation, is impossible in inanimate material processes, and is probably never effected by means of organized matter, either endowed with vegetable life or subjected to the will of an animated creature. (3) Within a finite period of time past, the earth must have been, and within a finite period of time to come, the earth must again be, unfit for the habitation of man as at present constituted, unless operations have been, or are to be, performed which are impossible under the laws to which the known operations going on at present in the material world are subject.<sup>3</sup>

According to this law, the tendency in all creation is toward de-

<sup>1</sup> Inaugural address, *On the Study of Politics*, p. 10.

<sup>2</sup> See his search for unity in *Mont Saint Michel and Chartres*.

<sup>3</sup> *The Tendency of History*, pp. 4-5.

cay or degradation, and Adams marshals his facts from all of the sciences to substantiate his interpretation of it. The sun, as a result of the dissipation of its energy, is constantly cooling and contracting. Consequently, the supply of energy in the solar system is being diminished. The earth, which intercepts only 1/2,300,000,000 of the energy given off by the sun, is in turn dissipating this tiny portion. Our planet is cooling in the higher latitudes, and is slowly but surely losing its fecundity. It produced its most luxurious plant life some millions of years ago, during the carboniferous period, and its most abundant animal life in the same period and the one immediately following. Man was the last known species to appear on the scene, and several other species are known to have become extinct since man made his appearance. Thus, our philosopher concludes that the earth is rapidly approaching senility.

The law of degradation, we are told, is just as applicable to man, or to society as a whole, as it is to the earth itself: "Sooner or later, every apparent exception, whether man or radium, tends to fall within the domain of physics."<sup>4</sup> "Science itself would admit its own failure if it admitted that man, the most important of all its subjects, could not be brought within its range."<sup>5</sup> Again: "All energies which are convertible into heat must suffer degradation; among these, as the physicists expressly insist, are all vital processes."<sup>6</sup> Human thought, as well as the human body, is simply a form of energy—probably a mere condensation of ether; hence it, too, obeys the laws of physics, and shows a constant tendency toward degradation.<sup>7</sup>

Though Adams is hesitant or tentative in stating some of his conclusions, he speaks with the certainty of an inspired prophet when he predicts the doom of all creation, and he believes that he is in accord with the best thought of his time: ". . . The universities have begun again . . . to announce through their astronomers the approaching demise of the solar system; through their geologists, the death of the earth and its occupants; through their physicists, the years still left for suns to shine, and the ultimate destiny of the celestial universe to become atomic dust at -270° centigrade; while their anthropologists point out the rapid exhaustion of the

<sup>4</sup> *Ibid.*, p. 94.

<sup>5</sup> *The Degradation of the Democratic Dogma*, p. 127.

<sup>6</sup> *The Tendency of History*, p. 48.

<sup>7</sup> *Ibid.*, pp. 163-166.

race, and their newspapers day by day proclaim its steady degradation."<sup>8</sup>

Any theory as inclusive as the foregoing would inevitably apply to all political or social institutions, but more especially so in the present case, since Adams regards society as an organism, which, like all living structures, must follow the path of senescence and decay. Indeed, in this connection he asserts that "as an organism, society has always been peculiarly subject to degradation of energy."<sup>9</sup>

In his "Rule of Phase Applied to History,"<sup>10</sup> Adams argues that everything, whether animate or inanimate, material or spiritual, exists in phase. For example, ice, water, and water-vapor are but different phases of the same thing. Just as water will change its phase if sufficiently heated or cooled, so will everything else change under certain conditions. "All is equilibrium more or less unstable." Thus, man and society are constantly changing with the environment in which they exist.

The doctrine of constant change or flux suggests an evolutionary theory, but Adams doggedly refused to accept the current theories of progressive evolution. His doctrine was rather one of evolution in reverse. He repeatedly expressed doubt that man had evolved from a lower to a higher form. To him, the fact that, two thousand years after Alexander the Great and Julius Caesar, a man like Ulysses Grant could represent the highest product of evolution made the idea of progress appear ridiculous.<sup>11</sup> He compares the art, literature, and philosophy of the ancients with those of the moderns, without any advantage to the latter, and he quotes the opinions of medical men and social philosophers to illustrate the mental, moral, and physical decline of the race, even within a single generation.<sup>12</sup>

Perhaps the most interesting, as well as the most fantastic, part of Adams' theory of social development is that in which he likens the course of human thought to the path of a comet which travels in a straight line through space until it approaches the solar system, when, by the operation of the law of gravity, its course is bent toward the sun until it is "captured." The comet passes around the sun, and returns in the direction from which it came. So with the

<sup>8</sup> *Ibid.*, p. 112.

<sup>9</sup> *Ibid.*, p. 126.

<sup>10</sup> *Ibid.*, Chap. 3.

<sup>11</sup> *The Education of Henry Adams*, p. 226.

<sup>12</sup> *The Tendency of History*, pp. 109-110, 118-119.

human mind. It traveled in an approximately straight line until about 1600 A.D., when it fell under some new and powerful influence which accelerated its motion and deflected its course until it turned and started back in the direction from which it had come. According to Adams' reading of the signs, the mind passed "perihelion" in the latter part of the nineteenth century, and by the opening of the twentieth century, it was definitely retrograde.<sup>13</sup> At another time, he prophesied that a revolutionary acceleration in thought would take place in the year 1917, and that mental activity would reach the limit of its possibilities about 1921, at which time we would pass from the "mechanical" into the "ethereal" phase of existence.<sup>14</sup>

Society, then, according to the view just summarized, is succumbing to the law of degeneration, and its decline and ultimate extinction are as inevitable as fate. Man's inventive ingenuity, his "conquest of nature," far from reversing or staying the process, only hastens it. Every apparent triumph over nature is accompanied by a disproportionate expenditure from nature's store of energy. For example, our progress in mechanical and industrial processes seems likely, in a few centuries at most, to bring about the exhaustion of the earth's available supply of coal, iron, and oil, to mention only a few substances which had required many millions of years for their accumulation. Thus, our so-called civilization has merely accelerated the pace at which we are moving to our ultimate doom.

It would be difficult to show that Henry Adams ever had a complete and coherent theory of government. Certainly his attitude toward contemporary political problems would not indicate any. Of aristocratic family and background, he very early in life embraced the abolitionist cause, which was democratic, at least in some of its implications. In 1848, his father was nominated for the vice-presidency by the Free Soil party, on an anti-slavery platform, and he tells us that the stamp of 1848 was imprinted upon him almost as indelibly as was the stamp of 1776.<sup>15</sup> In 1860, he cast his first presidential ballot for Lincoln, and when his father was appointed minister to England, Henry accompanied him to London in the capacity of private secretary. During his seven

<sup>13</sup> *Ibid.*, pp. 166-167.

<sup>14</sup> Brooks Adams, in a foreword to Henry Adams, *Degradation of the Democratic Dogma*, pp. 114-115.

<sup>15</sup> *The Education of Henry Adams*, p. 25.

year's stay in London, his attitude upon sectional and international questions was precisely what would be expected from one in his position. After his return to America, he supported President Grant in his first campaign, approved Grant's policy of expansion in the West Indies, and was astounded at Sumner's opposition. He was not a consistent imperialist, however, as he was shocked by Sumner's designs on Canada,<sup>16</sup> and he later raged at the part played by England in the Boer War.<sup>17</sup> His approach to political questions was generally ethical rather than narrowly partisan. The Civil War had left him a Republican, but he was so disgusted by the official corruption during Grant's administration, and became so outspoken in his criticism, that he was frequently regarded as a Democrat. Later, however, his intimacy with such Republican leaders as Don Cameron, John Hay, Theodore Roosevelt, and Henry Cabot Lodge seems to have led him back to Republican sympathies, though he was a free-silver man in 1896, and was often very critical of such men as Garfield, Conkling, Blaine, and McKinley.<sup>18</sup>

In spite of his abolitionism and his leanings toward a political party which was dedicated to the principles of democracy, Henry Adams never entertained a very high opinion of the masses, or the "average man." He once remarked that "average human nature is very coarse, and its ideals must necessarily be average. The world never loved perfect poise. What the world does love is commonly absence of poise, for it has to be amused."<sup>19</sup> Granting this premise, the democratic position becomes a difficult one to defend. Upon Grant's election to the presidency, Adams hoped that he would be as strong as an executive as he had been as a soldier, and that he would soon whip Congress into a decent state of submission, and either control that body or govern without it. In other words, he was ready to abandon representative government for a species of presidential dictatorship. He tells us that as a journalist, he "meant to support the executive in attacking the Senate and taking away its two-thirds vote and power of confirmation; nor did he much care how it should be done, for he thought it safer to effect the revolution in 1870 than to wait until 1920."<sup>20</sup>

Adams' attitude toward popular government was exactly what might be expected from an exponent of the doctrine of degradation.

<sup>16</sup> *Ibid.*, p. 275.

<sup>17</sup> *Ibid.*, p. 372.

<sup>18</sup> *Ibid.*, *passim*.

<sup>19</sup> *Ibid.*, p. 28.

<sup>20</sup> *Ibid.*, p. 262.

He regarded American democracy as having exhibited its greatest vigor in the very earliest years of the Republic. With the rise of factions and of conflicting class and sectional interests, democracy had begun its descent. Just as John Quincy Adams had observed its decline under Andrew Jackson, so his grandson noted its continued decline under Grant and his successors.<sup>21</sup> Brooks Adams, in his foreword to *The Degradation of the Democratic Dogma*, summarized the doctrine, which he seems to have shared with Henry, as follows: "Democracy is an infinite mass of conflicting minds and of conflicting interests which, by the persistent action of such a solvent as the modern or competitive system, becomes resolved into what is, in substance, a vapor, which loses in collective intellectual energy in proportion to the perfection of its expansion."<sup>22</sup> He added the gloomy prophesy that the modern world is doomed to sink into "that chaos of democratic mediocrity which Henry likens to the ocean, where waters which have fallen to sea level are engulfed, and can no more do useful work."<sup>23</sup>

By his own contemporaries, Henry Adams was often regarded as a liberal, or even a radical, but, as these terms are commonly used, he was neither. True, as private secretary to his father, American minister to England during and after the Civil War, he conceived a great admiration for Bright and Cobden, the leading English Liberals of the time, but this seems to have sprung largely from the fact that these gentlemen hated slavery, and hence were friendly to the Union cause. In them, he found friendship and sympathy, whereas in most of official and conservative England he found hostility. He was scathing in his denunciation of such men as Jay Gould and Jim Fisk, and was wont to speak disparagingly of the "vested interests."<sup>24</sup> This, however, does not indicate proletarian sympathies as much as it does a simple sense of decency, outraged at the methods by which some of the great fortunes were being made. He detested snobbishness and aristocratic pretensions, and he tells us that he and his family were always out of harmony with State Street, or the reigning aristocracy in Massachusetts. But he remained something of an aristocrat to the last. He repeatedly asserts that he was a product of the seventeenth century rather than of the nineteenth, and his criticism of the moneyed interests of his

<sup>21</sup> Brooks Adams, Foreword, pp. 104-108.

<sup>22</sup> *Ibid.*, p. 109.

<sup>23</sup> *Ibid.*, p. 116.

<sup>24</sup> See *Chapters of Erie*, by Brooks and Henry Adams.

time has some of the flavor of the contempt of the old aristocracy for the new industrial or "money-grubbing" aristocracy.

It is not easy to classify Adams' theories in terms familiar to students of political philosophy, but some of their implications are fairly apparent. That he held society to be ultimately controlled by mechanical or physical laws, that he believed in the organic nature of society, that his approach to contemporary politics was essentially ethical, and that he was not an enthusiast for democracy have, it is hoped, been made clear. Above all, however, his doctrine of degradation, in so far as practical questions of government and politics are concerned, must be characterized as futilitarian. If democracy has decayed, it is because decay is inherent in the nature of things. By the same logic, aristocracy, or any other system, for that matter, would be no better, since it must follow, and presumably has followed, substantially the same course. If the destiny of society is unalterably fixed, then all political and social systems are utterly futile in the end. No theologian ever arrived at a more positive theory of predestination than this.

It is not difficult to detect most of the influences that combined to shape Adams' views. Given his seventeenth-century puritan-aristocratic background, he would not be very likely to have a high regard for democracy. He could never forget what a democratic electorate had done to the House of Adams, as, for example, when it repudiated his great-grandfather for the radical Jefferson, and when it turned from his grandfather to Andrew Jackson, the idol of the mob, the spoilsman, and, in the eyes of the Adamses, the uncouth frontiersman incarnate. He was speaking of the perfect poise of his father when he reflected that average human nature is very coarse, and does not appreciate poise. It is not unreasonable to suspect that there is something personal about all this. It seems more than a coincidence that he regards American democracy as having been most vigorous in the days of his most illustrious ancestors, and that its decay coincides with the descent of his family—descent from presidents and vice-presidents to ministers and congressmen, to unsuccessful vice-presidential candidates, and finally to Henry himself, who was never offered any office or nomination to office. In other words, democracy had reached a point at which it could not use an Adams, or a point at which an Adams could not serve it without demeaning himself and his principles. Possibly, too, it is more than a coincidence that human thought seemed to him

to reach "perihelion" at the moment when he was in his greatest vigor, and that it began its decay at about the same time that he became conscious of his own approaching senility. It may be, too, that he retained a vestige of the Puritan horror of innovation, or that he, in common with the old men of every generation, became alarmed at the social tendencies about him, and regarded all change as retrogression from some primitive ideal state. Perhaps, unconsciously, he was using the language and method of modern learning to defend beliefs that were ancient and traditional.

Adams was forever seeking "unity in multiplicity."<sup>25</sup> Although current politics was chaotic in the extreme, he could not believe chaos to be the permanent order of things. "The sum of political life was, or should have been, the attainment of a working political system. Society needed to reach it. If moral standards broke down, and machinery stopped working, new morals and machinery of some sort had to be invented. An eternity of Grants, or even of Garfields or Conklings or Jay Goulds, refused to be conceived as possible."<sup>26</sup> His education, which seems to have been a life-long attempt to see and understand the relationship between man and the universe, was such as to leave him a trifle cynical. He tells us that "the selfishness of politics was the earliest of all political education."<sup>27</sup> In the Machiavellian policies of the European courts and the corruption and partisanship in American politics, he saw little warrant for optimism as to the future. In wars, intrigues, and bungling diplomacy, he could see little to indicate an intelligent control of society by human beings. It seemed, rather, to be driven by blind impulses, or by forces external to itself. Thus he felt compelled to go outside of society in his quest for an explanation of social phenomena.

If it had not been for his predilection for science and his bent toward secular philosophy, it is probable that Henry Adams would have returned to the theology of his ancestors, as his grandfather had done late in life, and sought his explanations in a divine will that surpasseth human understanding. As it was, he turned to the natural sciences, which is not surprising. In the course of his long, life (1838–1918), the sciences made astonishing progress, and his studies at Harvard College, in Berlin, and later all over the world

<sup>25</sup> *Mont Saint Michel and Chartres, passim.*

<sup>26</sup> *The Education of Henry Adams*, p. 281.

<sup>27</sup> *Ibid.*, p. 279.

acquainted him with the latest scientific discoveries. Buckle's *History*, with its emphasis upon the influence of environmental factors on history, appeared while Adams was an undergraduate, and Darwin's *Origin of Species* was published the year of his graduation. In London, he met Sir Charles Lyell, the geologist, and he even undertook to popularize Sir Charles' work in the United States. The second law of thermodynamics, upon which he later came to base his system, was still new when he first began to speculate upon the tendency of history. Since the sciences were clearing up more puzzling questions than any other branch of knowledge, it was not unnatural for him to turn to them for his answers.

It is possible that Henry was influenced by his brother, Brooks Adams. The two collaborated in writing *Chapters of Erie*, and seem always to have read and criticised each other's manuscripts. Indeed, it is sometimes difficult to say which one of them first expounded a given theory. Brooks, in his *Law of Civilization and Decay*, assumed that "the law of force and energy is of universal application in nature, and that animal life is one of the outlets through which solar energy is dissipated."<sup>28</sup> He agreed that society, or civilization, is on the down-grade, and observed that social phenomena seem to follow laws which regulate the material universe,<sup>29</sup> yet his approach seemed to be through economics rather than through science. To him, the decline was to be explained by economic factors operating within society. Henry, on the other hand, regarded these economic factors as mere symptoms or accompaniments of the decline, themselves the results of the universal tendency in nature. Thus he substituted a physical for an economic determinism.

A thorough and detailed criticism of Adams' philosophy of history would require the efforts of one who combines the attributes of historian, philosopher, and scientist. Some objections, however, are obvious. His inconsistency, if we consider all his writings, is readily apparent. It is certainly futile, if not inconsistent, to rail against a tendency in society while proclaiming its inevitability. He repeatedly denies that man and society have evolved upward, but just as repeatedly assumes that they have so evolved. His favorite method of criticising U. S. Grant is to say that he was "archaic," or "pre-intellectual,"<sup>30</sup> thus suggesting

<sup>28</sup> Preface, pp. viii-ix.

<sup>29</sup> *Ibid.*, p. viii.

<sup>30</sup> *The Education of Henry Adams*, Chap. 17.

that man in general has advanced from a pre-intellectual to an intellectual plane. Again, he says: "The leap of nature from the phase of instinct to the phase of thought was so immense as to impress itself on every imagination."<sup>31</sup> His analogy of the comet, in which he says that human thought reached "perihelion" in the latter part of the nineteenth century, really assumed that thought had advanced, and at a giddy rate of speed, for nearly three centuries.

It might well be argued that Adams did not select his scientific data impartially, or at least that he did not use them impartially. He seems to assume that the cooling of the earth in the higher latitudes has been a constant factor from the beginning of time, whereas we know that parts of the earth which were formerly under the polar ice cap now have relatively moderate climates. With all his insistence that society is organic, it apparently did not occur to him to liken it to the individual man, who is born weak and helpless, grows to strength and maturity, then declines and finally passes off the stage, but, before going, has begotten offspring that go through the same cycle. He seemingly assumed, in every case, a straight-line development—that the process of growing senile begins at birth rather than in middle age. He gave little heed to the rise and fall of races, nations, and civilizations, phenomena that suggest a cyclical or fluctuating development of society rather than a steady decline or decay. If everything does exist in phase, does it follow that every change of phase must be in the same direction? In the example given—that of ice, water, and water-vapor—we know that the change of phase may be reversed or repeated. If this rule applies to history, why may not social phases be repeated in like manner? If human thought really has traveled in an orbit similar to that of a comet, must we assume that, once it has passed "perihelion," it is doomed to eternal retrogression? What is to prevent it from returning periodically, as some comets are known to do?

In the present imperfect state of the science of psychology, we are unable to say positively whether the human mind can be expressed in purely physical terms, or whether human thought can be regarded as just so much energy. It is, to say the least, an open question. Certainly it would be difficult to show that thought passed "perihelion" in the nineteenth century, or even in the

<sup>31</sup> *The Tendency of History*, p. 166.

twentieth. Mechanical progress, at any rate, seems to be continuing unabated, though it may be questioned how long this progress can continue.

Granting that the sun is dissipating its energy, those who speculate upon this matter now tell us that it will be some millions of years before this would appreciably alter physical conditions on earth. Thus, Adams' theory really assumes that society is decaying for some reason other than the mere dissipation of physical energy and the consequent alteration of man's environment. In other words, the tremendous acceleration which he has noted does not seem wholly explainable in terms of the second law of thermodynamics.

Finally, Adams seems to make a one-sided use of science. While using it to explain and support his theories, he gives it little credit for its ability to find new sources of energy to supplant coal and oil, should they be exhausted, or its ability to counteract the very tendencies which he observes. He made much of the increase of certain diseases and the rising death-rate in his generation, both of which tendencies have been reversed, at least in most Western countries, through the advancement of science.

One need not agree with all of Adams' views in order to recognize his greatness and appreciate the services which he performed for the social studies. When all is said in criticism, we must respect his efforts to make a science of history, and should ponder well his assertion that human society is very closely attuned to nature. The doctrine that the destiny of man is to be found in the laws that govern the material world, whether true or false, will merit more study than has been given it, and quite probably the approach should be through the physical sciences. If the world ever needed a second Aristotle, one to effect a synthesis of all knowledge, and to interpret society in the light of all available information, it needs one now. The task may be an impossible one. Probably it is beyond the powers of any one man or group of men, but Henry Adams deserves recognition as an intrepid pioneer in the attempt.

## STATE CONSTITUTIONAL LAW IN 1933-34<sup>1</sup>

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More than ten years ago, the Earl of Birkenhead, former Lord Chancellor of Great Britain, speaking before the American Bar Association, expressed the belief that it was a question for the future to determine whether the barriers which the framers of the constitutions placed upon the complete freedom of legislative assemblies in the United States will prove equal to the emergencies as they arise and will be as adaptable to the stress and strain of political exigencies as the more flexible and more democratic arrangements of the British constitution. "Your constitution," he remarked, "is expressed and defined in documents which can be pronounced upon by the Supreme Court. In this sense, your judges are the masters of your executive. Your constitution is a cast-iron document. It falls to be construed by the Supreme Court with the same sense of easy and admitted mastery as any ordinary contract. This circumstance provides a breakwater of enormous value against ill-considered and revolutionary changes." On the other hand, so far as England is concerned, the genius of the Anglo-Saxon people has, rightly or wrongly, refused to shackle in the slightest degree the constitutional competence of later generations. Any law of Great Britain can be altered by Parliament and no court may challenge the constitutional force of an act of Parliament. It is on the whole premature, thought Lord Birkenhead, to decide whether you or we have been right.<sup>2</sup>

The attempts to meet the conditions resulting from the severe and long drawn out depression through which the country is passing raise anew the problem of the efficacy and the appropriateness of constitutional limitations. Though the courts as the authoritative interpreters of these limitations during the current year have passed on the usual types of issues relating to the separation and delegation of powers,<sup>3</sup> the protection of civil and political rights, the correspondence of the content of legislative acts with their titles, and controversies concerning administrative regulation, decisions on these issues are of minor significance in comparison

<sup>1</sup> I am indebted to Edward Walther, research assistant in political science, for much of the preliminary work necessary for the selection of cases to be considered in this article.

<sup>2</sup> Earl of Birkenhead, "Development of the British Constitution in the Last Fifty Years," 9 Amer. Bar Assoc. Jour. (Sept., 1923), 578.

<sup>3</sup> Delegations of power were declared illegal in Wylie v. Phoenix Assur. Co. 22 P. (2d) 845 (June, 1933, Ariz.); Sterling Refining Co. v. Walker 25 P. (2d) 312 (Aug., 1933, Okla.); Sculreson v. Walsh, 187 N.E. 921 (Oct., 1933, Ill.); and Goodlove v. Logan 251 N.W. 39 (Nov., 1933, Ia.).

with the efforts to reconcile the extraordinary features of much of the emergency legislation enacted in recent legislative sessions with the express and implied restrictions of the state constitutions. To state constitutional law as it is evolving in the midst of economic and social distress, prime consideration will be given in this analysis.

Among the emergency measures which have called forth judicial pronouncements during the year, the most important are the moratorium acts and the income or sales tax provisions.

#### I. REVIEW OF MORTGAGE MORATORIUM ACTS

The supreme court of Minnesota rendered one of the first opinions on a mortgage moratorium law. The act, passed as an emergency measure, with its provisions not to be extended beyond May 1, 1935, authorized the extension of the period of redemption from mortgage foreclosure for such time as the district court might deem just and equitable, with provisos that the extension was to be made upon application to the court on notice for an order determining the reasonable value of the income from the property involved in the sale, or, if it had no income, then reasonable rental value, and that the mortgagor pay a reasonable part of such income or rental value toward the payment of taxes, insurance, interest, and mortgage indebtedness.

Facing the situation in which the appellants conceded that the state law impaired the obligation of contracts and the respondents agreed that under the police power the state may impair the obligation of contracts, the court, following the reasoning of Judge Pound of New York, maintained that the state may establish regulations reasonably necessary to secure the general welfare of the community by the exercise of the police power, although the rights of property are thereby curtailed and the freedom of contract is abridged.<sup>4</sup> Emergency laws were held applicable to times of peace, and whether a public emergency existed was declared to be a question for the legislature to determine, though the judges could also be guided by common knowledge.<sup>5</sup> By a five to four decision, the Supreme Court of the United States affirmed the decision of the supreme court of Minnesota.<sup>6</sup>

About the same time, the supreme court of North Dakota invalidated a statute shortening or extending the period of redemption from real estate mortgage foreclosure sales as an impairment of the obligation of contracts.<sup>7</sup> The well-known rule that laws which subsist at the time and

<sup>4</sup> *People v. La Fetra*, 230 N.Y. 429, 442 (1921).

<sup>5</sup> *Blaisdell v. Home Building and Loan Association*, 249 N.W. 334 (July, 1933).

<sup>6</sup> *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934). See note on "Home Building and Loan Case," with comment on the probable validity of California's deficiency judgment stay law, civil code section 2924 1/2, 22 *Calif. Law Rev.* (March, 1934), 350. <sup>7</sup> *State v. Klein*, 249 N.W. 118 (June, 1933).

place of making the contract enter into and form a part of the contract, and that the statutory period of redemption comes within the rule in accordance with federal Supreme Court decisions,<sup>8</sup> was held to require the condemnation of the state law. A unanimous court could see no ground for warping the constitutional mold so as to fit emergency conditions. To close off arguments to the contrary, the dictum of Justice Davis was quoted that "no doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of the provisions of the Constitution can be suspended during any of the great exigencies of government."<sup>9</sup> It was then concluded that, "so long as the people of this state and the people of the United States say in their fundamental laws that this state shall not under any circumstances or at any time pass any law impairing the obligations of a contract, just so long must the courts follow the expressed will of the people."

Supreme courts in other states found it necessary to reconcile moratorium statutes with some troublesome constitutional formulae, but most of the decisions were reached after the federal Supreme Court had placed the stamp of approval on the Minnesota law. Differences of opinion among the state justices usually relate to the strict or liberal interpretation of the police power with respect to the relaxation of constitutional restrictions and to the consideration of variations from the type of statute enacted by Minnesota.

The majority of the supreme court of Oklahoma held a part of a moratorium act void with the observation that this court should not be swayed by public sentiment to alter, modify, or repeal any provision of the constitution. Three dissenting justices were impressed by the emergency character of the legislation and by the fact that the court during the period of postponement could require the payment of accruing interest and taxes and a reasonable rental as well as prevent waste or willful destruction of the property. To stay the hand of the unforbearing creditor and to require him by law to yield his contractual rights for a limited time in favor of the distressed owner of mortgaged property, in their opinion was in the interest of the general welfare, and in times of stress and storm the general welfare must be paramount to the private rights of the individual.<sup>10</sup>

On a rehearing, the majority again supported its former conclusions and suggested that the remedy to correct the present undesirable situa-

<sup>8</sup> Citing especially *Howard v. Bugbee*, 24 How. 461 (1860).

<sup>9</sup> *Ex parte Milligan*, 4 Wall. 2, 121 (1866).

<sup>10</sup> *State v. Worten*, 29 P. (2d) 1 (Oct., 1933). See also *Life Insurance of Virginia v. Sanders*, 62 S. W. (2d) 348, and *Murphy v. Phillips*, 63 S.W. (2d) 404 (Sept., 1933), in which a Texas court of civil appeals held void a six months' stay of foreclosure sales. For a consideration of these cases and other decisions on the Texas statute, see Leroy Jeffers, "The Texas Moratorium Law," 12 *Texas Law Rev.* (June, 1934), 383.

tion was to secure an amendment to the state constitution. During the course of the rehearing, the decision of the Supreme Court of the United States in the Minnesota case became known. The general result of a variety of opinions on the part of the justices was stated to be that, first, all members of the court agree that the provision of Section 1 of the act postponing all actions now pending in the courts for nine months is void; second, the majority condemn the remainder of Section 1 on the ground that the Oklahoma law grants flat or fixed extensions of time and does not, as the Minnesota act, place authority to grant extensions in the trial judge after a hearing, but uphold tentatively Sections 2 and 3 vesting in district courts power to grant continuances; third, the minority insisted that the entire act should be upheld on the ground that in effect similar ends were to be secured to those which were judicially approved in Minnesota.

Influenced no doubt by the reasoning in the Minnesota case, the Iowa supreme court sustained a moratorium act. Citing the language of Chief Justice Hughes in the Home Building and Loan Case that the police power "is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals," the majority of the court admitted that the act amounts to an impairment of the obligation of the mortgage contract and that in a certain sense there is a violation of the federal and state constitutional restrictions. Nevertheless they held the act valid; substantially, it was claimed, the Minnesota and Iowa acts are similar. With a division of opinion like that manifested in the Minnesota case, five justices joined in the majority opinion and four dissented. To the dissenters, the chief objection to the Iowa act was that it made no provision for the payment of anything to the mortgage purchaser. There can be no suspension of the rights under the mortgage contract unless reasonable compensation is assured to the mortgagee. The idea that there is a reserve power in the people to provide for the general welfare is declared not only unsound but extremely dangerous. Emergency, these justices insisted, cannot enable the assembly to pass laws which the constitution forbids.<sup>11</sup>

Declaring that an Arkansas act was similar to the Minnesota law, the state supreme court held that the law did not in effect impair the obliga-

<sup>11</sup> *Des Moines Joint Stock and Land Bank v. Nordholm*, 253 N.W. 701 (April, 1934). See *Russell v. Battle Creek Lumber Co.*, 252 N.W. 561 (Jan., 1934), holding valid in a per curiam opinion a Michigan moratorium law on the ground that the pertinent constitutional provisions are similar to those of Minnesota and the reasoning of the Home Building and Loan Case was applicable. With two justices dissenting, the Arkansas supreme court declared void a statute prohibiting deficiency judgments in mortgage foreclosure proceedings as involving an impairment of the obligation of contracts. *Adams v. Spillyards*, 61 S.W. (2d) 686 (June, 1933).

tion of contracts. Though the act does not provide for payment to the mortgagee of rents and profits accruing from the property during the pendency of the suit, this right, it was claimed, may be invoked under previous legislation. The legislature is considered primarily the judge as to when it becomes necessary to exercise the sovereign right of the state for the protection of the people. Since the Arkansas law was permanent, whereas the Minnesota law was temporary, and since no rents or profits were assured to the mortgagee during the two years' delay, Justices Smith and McHaney dissented.<sup>12</sup>

Perhaps the only remedy under existing constitutional provisions and consequent judicial constructions in certain states may be that suggested by the supreme court of Wisconsin that "in the light of the present emergency, and because of the present inadequacy of a judicial sale to establish a fair value for the security," a court of equity has power without the aid of a special statute to relieve mortgage debtors of liability upon deficiency decrees.<sup>13</sup>

There is implicit in the reasoning of these cases a conflict between what is ordinarily termed mechanical jurisprudence, to the effect that constitutional phrases and the fundamental principles which they are presumed to sanction must not be frittered away by legislative action or judicial interpretation. Amendment of the constitution is the only way to sanction emergency action. Constitutional principles, like dogmas of the common law are conceived as part of the universal order, and as such unchangeable. To others, constitutional phrases, as other terms in the law, should conform to the exigencies of time and place. Justice Stone, dissenting in the Minnesota moratorium case, expressed a view to which many justices subscribe, namely, recognizing that constitutions must change; "they express some principles which promise to be the ultimate concepts for the restraint of government in the interests of the governed."

Speaking of the diverse views of the justices in considering the validity of moratorium laws, Mr. Feller notes that "the legal armory is plentifully furnished with precedents either for or against the constitutionality of such legislation. In the last analysis, the choice to be made among many conflicting precedents and principles will depend upon the sensitiveness of the court to the dangers threatening the general economic structure."<sup>14</sup>

<sup>12</sup> *Sewer Improvement Dist. No. 1 v. Delinquent Lands* 68 S.W. (2d) 80 (Feb., 1934). The section of the act held void in *Adams v. Spillyards*, *supra*, that in any foreclosure in which real estate is involved, the real estate securing the loan sought to be foreclosed shall be considered to be the value of the loan made irrespective of the amount which may be realized from the sale of such real property, was held markedly different from the one before the court.

<sup>13</sup> *Suring State Bank v. Giese*, 246 N.W. 556 (Feb., 1933).

<sup>14</sup> A. H. Feller, "Moratory Legislation: A Comparative Study," 46 *Harv. Law Rev.* (May, 1933), 1080. For a tabular analysis of moratory legislation in the

## II. REVIEW OF STATE LAWS FOR RAISING REVENUE

More difficult constitutional issues have arisen in the rather frantic efforts of state legislatures to repair the inroads on state revenues caused by the depression.<sup>15</sup> Differences in the attitude of judges toward constitutional restrictions are manifested in the decisions on income tax laws. An income tax act adopted through the initiative in the state of Washington was held void. Income was declared to be property within the uniformity section of the constitution, and hence a graduated income tax was deemed impossible. An amendment in 1930 defined property as everything, whether tangible or intangible, subject to ownership. In view of this provision, the majority of the court thought decisions in other states could have no bearing on the case. Referring to the deplorable financial condition of the state, the justices thought it "better that we suffer the inconvenience of the present loss of such revenues than that we disregard the emphatic restriction of the constitution for the sake of temporary relief."

Following the reasoning of the Idaho case,<sup>16</sup> four dissenting justices regarded the tax as an excise since it operated entirely *in personam*; it required the taxpayer to act; it charged him, not his property. The majority opinion was scored on the ground that the disagreement of courts and judges gives ample proof of a reasonable doubt—and all justices agree that if reasonable doubt exists statutes are not to be invalidated. The dissenters cannot believe that by the enactment of the Fourteenth Amendment or the uniformity provision of the state constitution the people have rendered themselves impotent to adopt an income tax.<sup>17</sup>

An attempt to impose a graduated tax on incomes in Montana was considered favorably by the state supreme court, which held that it did not violate the uniformity clause of the constitution nor the equal protection clause of the Fourteenth Amendment. A special tax commission had recommended the enactment of an income tax, and in sustaining the tax the majority of the court regarded as controlling the reasoning of the Idaho court that the tax was an excise. "We satisfy ourselves," they said, "by saying that there are reasons why such a tax might be classed as a property tax, and reasons why it should be classed as an excise tax." The exemption of the income from corporations was defended on the ground

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United States, see *ibid.*, pp. 1081 ff. Cf. also comments on recent legislation for the relief of mortgage debtors, 42 *Yale Law Jour.* (June, 1933), 1236.

<sup>15</sup> Cf. "The Search for New Sources of Revenue," 47 *Harv. Law Rev.* (Jan., 1934), 503.

<sup>16</sup> *Diefendorf v. Gallet*, 10 P. (2d) 307 (1932). See also *Ludlow-Saylor Wire Co. v. Wollbrinck*, 205 S.W. 196 (1918).

<sup>17</sup> *Culliton v. Chase*, 25 P. (2d) 81 (Sept., 1933). During the last three years, thirteen states have adopted income tax levies. See 47 *Harv. Law Rev.*, 503.

that a major portion of the earnings of corporations are distributed as dividends to individuals.<sup>18</sup>

Through a proceeding under the Declaratory Judgments Act, the Minnesota income tax act was upheld.<sup>19</sup> The state constitution was amended in 1906 by the adoption of what was called the "wide open tax amendment." Omitting the equality principle and retaining the uniformity clause, the general intention was declared to be "to relieve the legislature of the narrow restrictions theretofore placed upon that branch of the government." The court sustained the act, deeming the exemptions and classifications under it reasonable and observing that "while income as received is necessarily property, a tax upon it has many characteristics which differ quite radically from those levied upon real or invested personal property."<sup>20</sup>

Other states attempted to preserve public credit by taxes on gross receipts or occupations, or by a general sales tax.<sup>21</sup> A South Dakota tax on gross receipts, so far as it relates to receipts from business pursuits, professions, trades, vocations, and callings, was held valid as an excise tax. Certain sections, however, were disapproved in so far as they applied to receipts other than those incident to a taxpayer's business, profession, or calling. The act introduced a novel scheme of taxation with a rate of one-fourth of one per cent on wholesale and retail sales and a tax on wages and salaries according to the following schedule: one per cent up to \$2000; one and one-half per cent up to \$5000; and two per cent in excess of \$5000. The court regarded the term gross receipts tax as a misnomer, since the levy is in part a property tax, a privilege tax, and an income tax. But since most state courts have approved a general sales tax as a privilege tax, this tax using gross receipts as a measure is approved as an excise, license, or privilege tax. It is recognized that there are discrepancies here between the criteria of law and economics and that highly artificial reason-

<sup>18</sup> *O'Connell v. State Board of Equalization*, 25 P. (2d) 114 (July, 1933). Chief Justice Calloway and Justice Angstman thought the law could not stand because income is in every essential respect property.

<sup>19</sup> In Minnesota and Idaho, income tax acts were passed by the legislature after proposed constitutional amendments permitting income taxes were defeated.

<sup>20</sup> *Reed v. Bjornson*, 253 N.W. 102 (Mar., 1934). See *Standard Lumber Co. v. Pierce*, 228 P. 812 (1924), holding valid the Oregon graduated income tax. For an analysis of the conflicting views on the income tax, see Robert C. Brown, "The Nature of the Income Tax," 16 *Minn. Law Rev.* (Jan., 1933), 126 ff. Mr. Brown concludes that "there are some slight analogies between the income tax and purely personal taxes; much stronger analogies between it and property taxes; and the strongest analogies of all between income and excise taxes." *Ibid.*, 145.

<sup>21</sup> Since 1930, more than twenty states have adopted some form of a general sales tax. Cf. Carl Shoup and Louis Hainoff, "The Sales Tax," 34 *Columbia Law Rev.* (May, 1934), 809.

ing is involved, but practical devices rather than theoretical distinctions were considered essential.<sup>22</sup>

With the way closed by the disapproval of a constitutional amendment for the enactment of an income tax and by judicial rejection of a law passed by the legislature,<sup>23</sup> the Illinois legislature turned to a general sales tax, and a three per cent tax was applied to all persons engaged in the business of selling tangible personal property at retail. But since the act exempted farm products and farm produce sold by the producer and motor fuel at retail, it was held to involve unwarranted discriminations.<sup>24</sup> The plan of distributing the tax among the several counties was also disapproved. In counties having more than 500,000 inhabitants, the money was to be expended by the emergency relief commission; in the smaller counties, the funds might be used for education or relief. On the ground that the legislature may not, under constitutional restrictions, vest discretion as to the expenditure of state funds in local offices, the provisions appropriating the funds to the counties were declared invalid. The objectionable provisions being integral parts of the whole plan, the court denied enforcement to the entire act.

The legislature then turned to a retailer's occupation tax—the tax to be measured by the amount of the gross receipts received by a person engaged in the business of selling tangible personal property at retail. Credit sales and conditional sales were not to be taxed until the purchase price was paid. This act seemed to stand all the tests of constitutionality, and was sustained.<sup>25</sup> The claim that a change of one vote would have defeated the measure and that a disqualified member participated in the voting was ignored.

When the Colorado legislature authorized the borrowing of money to relieve unemployment by providing work on highways as a measure to protect and defend the state, the justices regarded state defense as a subterfuge and advised the governor and legislature that the contract for such a loan could not be sustained. Defense of the state is thought to be confined to provisions to meet attacks or threatened attacks. Justice Burke objected to the rather common assumption that such a law can be condemned only by a narrow construction of the constitution as opposed to a broad or liberal interpretation. This view, he argued, is based on a "popular fallacy that all interpretation which upholds legislation is broad and all which overthrows is narrow."<sup>26</sup>

<sup>22</sup> State v. Welsh, 251 N.W. 189 (Dec., 1933).

<sup>23</sup> Bachrach v. Nelson, 132 N.E. 909 (1932). See this REVIEW, Vol. 27, p. 757.

<sup>24</sup> Winter v. Barrett, 186 N.E. 113 (May, 1933).

<sup>25</sup> Reif v. Barrett, 188 N.E. 889 (Dec., 1933).

<sup>26</sup> *In re* Senate Resolution No. 2, etc., 31 P. (2d) 352 (Dec., 1933). See dissent by Justices Butler, Bouck, and Holland.

With a constitutional limit on state indebtedness of \$250,000, an act authorizing the state executive council to issue twenty million dollars worth of bonds to replenish the state sinking fund for public deposits so as to release public funds in closed banks was condemned. The provision authorizing a one mill tax levy and pledging the returns as a sinking fund for payment of the bonds did not meet the court's view of the constitutional requirements.<sup>27</sup>

But the unemployed and those in distress have not always found constitutions, through their official spokesmen, barriers to relief legislation. The Kansas supreme court could see no objections to a statute permitting the highway commission to borrow money from the federal government for road construction and maintenance in order to furnish aid to the poor and needy, although the constitution placed this duty upon the counties.<sup>28</sup> The constitutional provision prohibiting debts in excess of a million dollars, unless ratified by the voters, was held inapplicable. So an amendment to the motor fuel tax law providing for the use of part of such tax to pay the interest and principal of emergency relief bonds was held valid.<sup>29</sup>

Various phrases designed for other purposes have been chosen as a basis for a relaxation of the constitutional requirements. The legislature of Washington authorized the issuance of general obligation bonds in the sum of \$10,000,000 for the relief of state-wide unemployment and poverty, without popular submission and approval. Because the act was passed to meet a critical emergency and was declared to have a constitutional purpose as an aid "to suppress incipient insurrection," it was declared valid. The legislative declaration of an emergency was held to be conclusive, since the constitution of which the judges are not the sole guardians envisages prevention of disorders as well as their suppression. As the act was intended primarily for relief of unemployment and poverty, and not for the immediate suppression of insurrection, three justices took issue with their brethren. There was danger, they thought, that the constitution was becoming the plaything of the legislature and the courts and that it was being destroyed to serve humanitarian purposes.<sup>30</sup>

In a similar manner, the provision in the state constitution of West Virginia that "no debt shall be contracted by this state, except to meet casual deficits in the revenue to redeem a previous liability of the state, to suppress insurrection, repel invasion or defend the state in time of war," was given a new application, when the legislature authorized the issuance of five million dollars of state bonds to meet casual deficits in the general

<sup>27</sup> Hubbell v. Herring, 249 N.W. 430 (July, 1933, Ia.).

<sup>28</sup> State v. Kansas State Highway Commission, 28 P. (2d) 770 (Jan., 1934).

<sup>29</sup> Michaels v. Barrett, 188 N.E. 921 (Jan., 1934, Ill.).

<sup>30</sup> State v. Martin, 23 Pac. (2d) 1 (June, 1933).

revenue and capitol building funds. Approving the issuance of the bonds, the court observed that "the state constitutional requirements are for the preservation of the state and the maintenance of its integrity and for the protection of the people. Constitutional limitations must not be so construed as to be subversive of their very purpose."<sup>31</sup>

But when the legislature of West Virginia attempted to adjust the tax structure of the state to the tax limitation amendment approved by the voters in November, 1932, the court refused to give its approval despite the serious emergency situation. A law providing for tax levies to meet the current expenses of local government was enacted on the assumption that interest and sinking fund payments on local and bonded debt were not included within the maximum levies of the tax limitation amendment. The supreme court, however, insisted that in accordance with the amendment all debt services for local bonded indebtedness must be paid first and within the prescribed maximums before a current expense levy could be laid.<sup>31a</sup>

The legislature, again called into special session, then proposed by a general law to grant aid to counties and to various local districts. The act authorized payment, from the general revenues of the state from taxes on privileges, franchises, and incomes, of money to meet interest and sinking fund charges on the bonded indebtedness of all counties, magisterial, school, and other taxing districts, except municipalities, incurred prior to November, 1932, for roads and for schools. A state sinking fund commission was to administer the act. The state supreme court held this act void on various grounds. Consideration was given first to the provision of the constitution that the state shall not become responsible for the debts or liabilities of any county, city, township, corporation, or person. This prohibition was asserted to have been adopted primarily to prevent action as contemplated in the above act. In the second place, the act was held to violate due process of law "as an arbitrary exercise of governmental power." Judge Maxwell conceded that these are difficult days, but he did not consider them so difficult that the organic law must be circumvented by forced construction. The underlying purpose of written constitutions is believed to be the preparation of "a safe and definite harbor for the ship of state in times of tempest."

Justices Hatcher, Woods, and Litz protested against the strict constitutional construction of the majority in the present emergency. The constitution requires that the state provide "a thorough and efficient system of free schools." But in their opinion, by the reasoning of the

<sup>31</sup> *Dickinson v. Talbott*, 170 S.E. 425 (June, 1933).

<sup>31a</sup> *Bee v. City of Huntington*, 177 S.E. 539 (Sept., 1933). See John F. Sly, "Rebuilding in West Virginia: Fifteen Months of Legislation (1933-1934)," *Public Affairs Bulletin*, No. 7, Bureau of Government Research.

majority, the state may not grant aid to local districts to accomplish this purpose. Since the payment of debt charges left little for operating expenses in many local units, the utmost liberality in construction was deemed imperative. And then, with a touch of judicial realism, Justice Hatcher referred to the negative and destructive consequences of the court's holding, as follows: "My attention has been called to no solution of that problem—and I presume the legislature knew of none—which does not seem to involve an infringement on some constitutional provision."<sup>32</sup> An amended bill making more adequate provision for debt services finally received judicial approval.<sup>32a</sup>

A Colorado statute imposing additional motor vehicle registration fees to provide funds for the aid of the needy and destitute was held void as imposing a tax for county purposes.<sup>33</sup> The money collected from the fees was to be credited to the county emergency relief fund and was to be expended under the direction of the board of county commissioners. Since the fees were graduated according to the value of the motor vehicle, the majority insisted that the act imposed a property tax; and since the sole purpose of the act was considered to be the raising of revenue, the police power was held not to be applicable and the constitutional inhibitions concerning uniformity were controlling. The duty to care for the needy belongs to the county. And thus, with "heavy hearts," the majority of the court declared the act void, with the significant comment that "we pronounce as the most certain of law that there has never been, and can never be, an emergency confronting the state that will warrant the servants of the constitution waiving so much as a word of its provisions."<sup>34</sup>

The tangled efforts in Alabama to keep the schools going by the issuance of warrants came to the supreme court through an injunction sought by a school teacher. The excess of appropriations over income was estimated at twenty million dollars, covered by outstanding warrants. Sixteen millions of these warrants were issued for the payment of teachers and for other educational outlays. An injunction tying up the payment of all governmental expenses to recapture misspent school funds was held properly dissolved. And it was declared that in accordance with the re-

<sup>32</sup> *Berry v. Fox*, 172 S.E. 896 (Jan., 1934).

<sup>32a</sup> See John F. Sly, *op. cit.*, 12.

<sup>33</sup> *Walker v. Bedford*, 26 P. (2d) 1051 (Oct., 1933).

<sup>34</sup> Justices Butler, Bouck, and Holland thought the act should be sustained as a valid exercise of the police power. The exaction was regarded as an excise tax and as such covered by the police power, which "is the least limitable of the exercises of government." "If this court," said Justice Bouck, "could have decided in favor of the validity of the U.R. Act, I feel that the court would not only have been fairly within the principles of the constitutions of Colorado and the United States, but more in step with the march of human progress." And Justice Holland believed that "we best uphold the constitution when we find that its elasticity will at least allow temporary measures to meet human needs."

strictions of the constitution "the legislature cannot create debts by appropriations in excess of revenues, by the creation of new offices, by expanding the functions of government, nor by enlarging the activities of its departments, however important or insistent the public demand." Outstanding warrants in excess of revenues, it was asserted, could be paid only by means of a constitutional amendment.

Though the prospect was not promising for the payment of teachers' salaries in Alabama, the injunction sought in this case resulted in a condemnation of the attempt to add to the pay of members of the legislature by granting four dollars a day extra beyond the constitutional allowance, for reasonable expenses incurred while in attendance upon the sessions of the legislature.<sup>35</sup>

In a taxpayer's suit to restrain a school district from selling refunding bonds to retire outstanding warrants, it was held that constitutional provisions relating to appropriations by the legislature and the restrictions on state indebtedness do not apply to school districts which are controlled by special debt restrictions. A policy limiting school trustees from drawing warrants unless there was sufficient money in the treasury was changed by a legislative act authorizing the issuance of warrants in anticipation of school moneys which have been levied but not collected. Many districts had issued such warrants based on taxes levied but never collected.<sup>36</sup>

To meet such an emergency situation, the legislature passed an act validating outstanding and unpaid warrants at the close of the year, June 30, 1933. But the supreme court did not conceive it part of its duty to aid school districts in escaping the consequences of excess expenditures or misfortune. And the contention that warrants issued in anticipation of the collection of taxes do not constitute indebtedness was held fallacious.

Some unforeseen results emanated from constitutional inhibitions in decisions relating to the efforts of federal agencies to render assistance to the states for emergency purposes. A statute authorizing the forestry, fish, and game commission to obtain a loan from the Reconstruction Finance Corporation and permitting the commission to use the funds in carrying on internal improvement projects was held to violate the provision limiting the state's authority to engage in such works. To the justices, it was necessary to look to the meaning of the constitution at the time of its adoption in 1859 and to follow what was clearly then provided as a fiscal policy of "pay as you go," so far as the current expenses of the state government are concerned.<sup>37</sup> And the grant of money from the

<sup>35</sup> *Hall v. Blau*, 148 So. 601 (June, 1933). See also *Wertz v. Shane*, 249 N.W. 661 (July, 1933), holding that a taxpayer, on the attorney-general's refusal, may sue state legislators to compel repayment to the state treasurer of expense moneys unconstitutionally paid to them.

<sup>36</sup> *Farbo v. School Dist. No. 1 of Toole Co.*, 28 P. (2d) 455 (Dec., 1933, Mont.).

<sup>37</sup> *State v. Boynton*, 30 P. (2d) 291 (March, 1934, Kan.). The fact that the present state debt approximated twenty-two millions was no doubt a consideration

National Recovery Administration to erect buildings at the state hospital with an agreement to repay part of the loan was held to create an obligation in violation of constitutional limits.<sup>38</sup>

Efforts to relieve the unfortunate situation of those delinquent in tax payments also led to divergent results. An act permitting the payment of back taxes relieved of penalties, interest, and costs was upheld as applied to all persons on whose property taxes remained delinquent on January 1, 1933, regardless of the contentions that it violated the uniformity provisions of the constitution and the restriction against the releasing of indebtedness.<sup>39</sup> And an extension of the redemption period and a reduction of the rate of interest and penalties as applied to sales of land for taxes to county and state prior to its enactment was held not to violate the constitutional provision prohibiting the legislature from releasing indebtedness due to the state or the county.<sup>40</sup> But an act suspending for five years foreclosure proceedings on tax certificates held by the city was rendered inoperative because it made ineffective provisions applicable for the payment of obligations at the time that certain contracts were negotiated.<sup>41</sup> Asserting that the police power must be exercised within constitutional limits, the supreme court of West Virginia held an act void extending the time for redeeming tax sales.<sup>42</sup>

### III. APPLICATION OF PHRASES "DUE PROCESS OF LAW" AND "EQUAL PROTECTION OF THE LAWS"<sup>43</sup>

State justices called upon to sanction emergency legislation were frequently influenced by the decision of the court of appeals in New York in the *Nebbia Case*. In this case, the fixing of a minimum price for milk by a milk control board under a state law passed to deal with emergency conditions in a dairy industry was challenged as exceeding the constitu-

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which influenced the court in arriving at its decision. See, however, the holding that the debts of the Rhode Island emergency public works corporation to the federal government for public works under the National Recovery Administration are debts of the corporation as a separate entity and not of the state, *In re Opinion to Governor*, 168 A. 748 (Dec., 1933).

<sup>38</sup> *Sholtz v. McCord*, 150 So. 234 (Oct., 1933, Fla.).

<sup>39</sup> *State v. Koeln*, 61 S.W. (2d) 750 (June, 1933).

<sup>40</sup> *Grieb v. National Bank of Kentucky's Receiver*, 68 S.W. (2d) 21 (Dec., 1933). Consult Newman F. Baker, "Tax Delinquency—Legal Aspects," 27 *Illinois Law Rev.* (June, 1933), 159.

<sup>41</sup> *State v. Hoy*, 151 So. 1 (Oct., 1933, Fla.). See *McNee v. Wall*, 4 F. Supp. 496 (Aug., 1933), for decision invalidating an act providing for redemption of delinquent tax certificates in bonds in lieu of money as provided in the original contracts.

<sup>42</sup> *Milkinit v. McNeely*, 169 N.W. 790 (June, 1933).

<sup>43</sup> For other cases interpreting the phrase "equal protection of the laws," involving condemnation of acts because of *unreasonable classifications*, see *State v. Cummings*, 63 S.W. (2d) 515 (Oct., 1933); *Baker v. Braden*, 24 P. (2d) 293 (Aug., 1933); and *Harbert v. Mabry*, 61 S.W. (2d) 652 (June, 1933); or of *unreasonable discrimination*, *Ernesti v. City of Grand*, 251 N.W. 899 (Dec., 1933).

tional boundaries. Chief Judge Pound conceded that such a statute would have been condemned formerly as "a temerarious interference with the right of property and contract."<sup>44</sup> We must not fail to consider, however, continued Judge Pound, that the police power is the least limitable of the powers of government, that it extends to all the great public needs, and that constitutional law is a progressive science. Statutes designed to conform the law to the accepted standards of the community, or to stimulate the production of a vital food product by fixing living standards of prices for the producer, are to be interpreted, he believed, with that degree of liberality which is essential to the attainment of the end in view. "With full respect for the constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies; with cheerful submission to the rule of the federal Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances, and even then by reasonable regulation only," the court did not feel compelled to hold that the due process clause of the constitution has left the producers unprotected from oppression. The policy of non-interference with individual freedom, it was asserted, must at times give way to the policy of compulsion for the general welfare. Justice O'Brien, dissenting, admitted that the police power is "a dynamic agency vague and undefined in its scope," but in his opinion it cannot rise superior to the constitution; "this great instrument of government is not a thing merely to be extolled in academic halls, to be the subject of juvenile orations, and to be tolerated as innocuous only so long as its prohibitions are unnecessary in practical ways. It is not quiescent; it is vibrant. It cannot become obsolete until the states vote to amend or repeal it."<sup>45</sup>

The decision of the federal Supreme Court sustaining the New York court in the *Nebbia Case*<sup>46</sup> may lead to a renewal of price-fixing legislation. Despite former decisions of the highest court condemning such legislation, Montana passed a law regulating the prices to be charged for standard petroleum products. Though the purpose of the act was stated to be the prevention of unjust discrimination, price-cutting, and rebates, it was declared void as a price-fixing measure. The business, not being affected with a public interest, could not be so regulated.<sup>47</sup>

But the banking business was thought to be sufficiently affected with a public interest to permit a statute vesting control of banks in the governor and forbidding legal proceedings against banks without the governor's

<sup>44</sup> See *In re Jacobs*, 98 N.Y. 98 (1885), and *Lochner v. New York*, 198 U.S. 45 (1905).

<sup>45</sup> *People v. Nebbia*, 262 N.Y. 259 (July, 1933).

<sup>46</sup> *Nebbia v. New York*, 54 S.Ct. 505 (1934).

<sup>47</sup> *Clack Co. v. Public Service Commission*, 22 P. (2d) 1056 (June, 1933, Mont.).

approval. As a police regulation, such an act passed as an emergency measure "not operating unreasonably beyond the occasion of its enactment, is not rendered void by the fact that it may incidentally affect some right guaranteed by the constitution."<sup>48</sup>

Contrary to a rather general rule that the state has priority over other creditors in insolvent banks, there was in Maryland no recognized priority either at common law or by statute in favor of the money of the state on deposit in banks. By the provisions of an emergency banking bill placing under the control and management of the state banking commissioner all state banks and trust companies which could not prove their ability to meet outstanding obligations, unsecured deposits of municipalities, which normally do not have a preferred status, were given priority, and they were exempted from restrictions against withdrawals. This act was declared invalid as an impairment of the obligation of contracts and a denial of due process of law. The state could not, it was held, commandeer without compensation the funds of the small fraction of citizens who happen to have money in the same depository as the city.<sup>49</sup>

For similar reasons, a river compact between Colorado and New Mexico was held not available to protect state water officials from violating valid decrees adjudicating water rights. The compact whereby the waters of the La Plata River were to be "rotated" to meet as nearly as possible the rights and needs of appropriators in both states was ignored as a "mere compromise of presumably conflicting claims" in which the property of citizens is bartered, without notice or hearing, and with no regard to vested rights.<sup>50</sup>

Freedom of contract continues to be a sacred right which legislatures must not violate. A Florida statute requiring a bond of security dealers, which was difficult for ordinary dealers to obtain, was declared illegal. "Suppression of lawful callings," says the court, "through burdensome and oppressive conditions precedent, designed to be enforced by bureaus, boards, or commissions acting under authority of law, are as much subject to the inhibitive force of the organic law as are statutes which in terms directly prohibit lawful businesses, trades, and occupations to no good purpose."<sup>51</sup> Asserting that "it is not within the legislative competence to destroy a legitimate business in times of depression any more than in

<sup>48</sup> *State v. Gibbes*, 172 S.E. 130 (May, 1933, S. Car.).

<sup>49</sup> *Ghingher v. Pearson*, 168 A. 105 (July, 1933). For indications of the inclination of the courts to disfavor the state's sovereign right of priority, see note in 43 *Yale Law Jour.* (Jan., 1934), 510.

<sup>50</sup> *La Plata River & Cherry Creek Ditch Co. v. Hinder Lider*, 25 P. (2d) 187 (July, 1933, Colo.). Justice Butler thought that the court in its decision had ignored the rule that each state is entitled to an equitable share of the waters of an interstate stream.

<sup>51</sup> *Riley v. Sweet*, 149 So. 48 (May, 1933).

normal times," the federal district court held void a Kentucky act imposing a tax of ten cents per pound on oleomargarine.<sup>52</sup>

Various attempts have been made through legislation and administrative agencies to prohibit "yellow dog contracts." The National Industrial Recovery Act places the stamp of disapproval upon such contracts. But a New Hampshire proposal to prohibit contracts of this type resulted in an unfavorable advisory opinion by the state supreme court. The proposal to limit equity jurisdiction in labor disputes was considered so discriminatory as to violate the equal protection of the laws, and the limitation on the power of the court to punish for contempt was criticized as an interference with an essential attribute of a court of general jurisdiction.<sup>53</sup>

State utility commissions, such as those of California, Massachusetts, and Wisconsin, which have been using prudent investment or historical cost instead of reproduction cost as the base for rate determinations will be concerned as to the outcome of the decision in the Pacific Gas and Electric Company Case.<sup>54</sup> Where a state utility commission departed from the rules laid down by the Supreme Court of the United States for the determination of the proper rate base and a federal court was in doubt whether the evidence supported the commission's order relating to gas rates alleged to be confiscatory, it was held an interlocutory injunction should issue. It was contended that the commission made no allowance for going concern value and claimed to have used as the rate base "actual or estimated historical costs of the properties undepreciated, with land at its present market value." This procedure is declared to be contrary to repeated holdings of the Supreme Court.

A more favorable attitude toward administrative determinations was shown by the supreme court of Michigan. Supporting the conclusiveness of fact-finding by a state utility commission, that tribunal held void an act in so far as it authorized the review and final determination by the courts of issues of fact. Issues of fact as to the granting of certificates of public convenience were considered clearly to be legislative and not judicial questions.<sup>55</sup>

The query of Lord Birkenhead as to whether the rigid written constitu-

<sup>52</sup> Field Packing Co. v. Glenn, 5 F. Supp. 4 (April, 1933). See also Capital Gas & Electric Co. v. Boynton, 22 P. (2d) 958 (June, 1933, Kan.), holding void as a denial of equal protection of the laws an act prohibiting the sale of gas appliances by those engaged in manufacturing, distributing, or selling gas.

<sup>53</sup> *In re Opinion of Justices*, 166 Atl. 640 (May, 1933). *Adair v. United States*, 208 U.S. 161 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915); and *Truax v. Corrigan*, 257 U.S. 312 (1921) were cited with the comment that, despite criticisms, these decisions are the supreme law of the land.

<sup>54</sup> *Pacific Gas and Electric Company v. Railroad Commission*, 5 F. Supp. 878 (Feb., 1934).

<sup>55</sup> *In re Consolidated Freight Co.*, 251 N.W. 431 (Dec., 1933).

tions of the United States will be as adaptable to the stress and strain of political and economic exigencies as the flexible arrangements of the British constitution remains unanswered. But the last few years have put to a severe test the American principles of constitutional government. Never before have such far-reaching economic and political measures been undertaken by the state governments, many of which run counter to the constitutions as formerly interpreted by the courts. The fact that they were deemed necessary to meet the extraordinary conditions of an appalling economic depression, and that they were enacted as emergency measures, leaves some difficult problems of constitutional interpretation.

Perhaps written constitutions have not been relegated to a minor rôle in the American system of government because they have been applied with some measure of flexibility, and because they are as a rule expressed in language so general that the skilled interpreter may "march language and meaning along the same line of argument in opposite directions."<sup>56</sup>

<sup>56</sup> Walton H. Hamilton, "Constitutionalism," *Encyclopaedia of the Social Sciences*, Vol. 4, p. 258.

## LEGISLATIVE NOTES AND REVIEWS

**Contemporary State Statutes for Liquor Control.** Those who view with apprehension the centralizing tendencies of New Deal legislation may find solace in the antithetical development in the field of liquor control. The uniform control achieved by the Eighteenth Amendment was the object of applause until its evident unworkability was discovered. It is one of the paradoxes of American politics that we have destroyed the possibility of centralization in the field of liquor control at the same time that we have been attempting to achieve greater centralization in a number of activities hitherto believed to be completely in the field of state authority.

The jumbled checkerboard of experiments in the field of liquor control, from which we were relieved during the prohibition era, has returned. Only three states remain "bone dry"<sup>1</sup> and in one of these, Georgia, some cities have permitted the sale of beer under local license. Twelve states permit merely the sale of beer, and in three others, while the sale of beer alone is permitted, individuals are allowed to import liquor for their personal use.<sup>2</sup> Twenty-nine states at the present time [June, 1934] have liberalized their laws and permit, under restrictions varying in stringency, the manufacture, distribution, sale, and consumption of alcoholic beverages. One other state, Mississippi, has passed a liquor control act which was submitted to the electorate for approval in July.<sup>3</sup>

Of the wet states, all but Louisiana and Kentucky have adopted new permanent liquor laws. Louisiana at the present time has no liquor law, and the entire problem of control is taken care of by the individual localities. Kentucky has constitutional prohibition, but has surmounted that obstacle by setting up a license system based upon the hypothesis that all the liquor consumed is for medicinal purposes—imbibed after self-prescription.

Most of the states which permit the sale of liquor have created special governing authorities, although six of them have utilized existing agencies

<sup>1</sup> Alabama, Georgia, and Kansas.

<sup>2</sup> Arkansas, Florida, Idaho, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming permit the sale of beer only. Maine, South Carolina, and West Virginia are the states permitting the sale only of beer, but allowing importation of liquor for personal use. It might be added that Arkansas permits the manufacture of home brew and wines for personal consumption and Florida permits the manufacture of alcoholic beverages for personal use.

<sup>3</sup> Eight of the dry states have arranged for referenda on their dry laws: Florida, Kansas, Nebraska, South Dakota, West Virginia, and Wyoming will vote in November; Maine in September; and Idaho in December. The Mississippi control bill was defeated at a referendum on July 10, 1934.

for the purpose.<sup>4</sup> Two states, Montana and New Mexico, have created ex-officio boards, and the proposed law in Mississippi provided a similar arrangement.<sup>5</sup>

In the twenty remaining wet states, new governmental bodies have been created. These have been given various names, the most common being "the liquor control commission." Indiana, however, created the office of excise director, and in Missouri there is a supervisor of liquor control. These bodies vary in size. Four states have centered complete responsibility in an individual.<sup>6</sup> Michigan, New York, Ohio, and Rhode Island have created five-man commissions.<sup>7</sup> The remaining states have placed responsibility in boards of three members.<sup>8</sup>

The method of selection is usually by nomination of the governor and approval by the senate, but in this respect again there is little uniformity. Seven states permit the governor to exercise complete authority.<sup>9</sup> New Jersey stands alone in providing for the selection of the state commissioner of alcoholic beverage control by a joint session of the state legislature.

In making nominations, the governor is limited only by the requirement that the members of the board or commission shall be citizens of the state and of the United States, that they have no interest, direct or indirect, in the manufacture, sale, or distribution of alcoholic beverages, and that not more than two or three of the board members (depending upon the size of the board) shall be members of the same political party. Rhode Island imposes a unique limitation upon the governor's choice by compelling him to make his appointments from lists of five names submitted to him by the chairman of each of the political parties.

Provision for a continuity of personnel is achieved in most of the statutes by providing overlapping terms for board members. After the shorter terms served by the original commissioners, the regular term of office

<sup>4</sup> Arizona, the state tax commission; California, the state board of equalization; Colorado, the state treasurer; Kentucky, the state tax commission; Maryland, the state comptroller; and Wisconsin, the state treasurer. All of these except Maryland and Wisconsin grant complete authority to the designated state agency.

<sup>5</sup> In Montana, the state board of examiners, composed of the governor, the attorney-general, and the secretary of state, is made the state liquor control board with sole authority. The state board of liquor control in New Mexico is composed of the secretary of state, the attorney-general, and the director of public health. The liquor commission proposed in Mississippi is to be a body of three—the governor, the attorney-general, and the secretary of state. Only in Montana is this ex-officio body given exclusive authority.

<sup>6</sup> Delaware, Indiana, Missouri, and New Jersey.

<sup>7</sup> In Michigan, the board is composed of three appointive members with the governor and secretary of state acting as ex-officio members.

<sup>8</sup> Connecticut, Illinois, Iowa, Massachusetts, Minnesota, New Hampshire, Oregon, Pennsylvania, Vermont, Virginia, and Washington.

<sup>9</sup> Connecticut, Delaware, Illinois, Indiana, Oregon, Virginia, and Washington.

varies from three years in Massachusetts and Michigan to a nine-year term in Washington. A plurality of the states at the present time provide six-year terms. Indiana does not provide by statute for a definite term for its excise director, but does impose the limitation that the governor shall not appoint him for a term in excess of four years. Missouri prescribes that the supervisor of liquor control shall serve at the pleasure of the governor. Most of the states provide for the removal of board members for violation of the law or because of removal from the state. They also provide that a board member shall be disqualified if he holds any other office in the state or federal government or does not devote his entire time to the work of the commission.

The powers of the agencies for control of the liquor traffic are dependent to some extent upon the type of control exercised by the state. In the eleven states which have established state monopolies, the control boards, speaking generally, possess more extensive powers than the boards in license states.<sup>10</sup> With the exception of Vermont and Virginia, all of the states operating under monopoly laws have granted exclusive regulatory powers to the state agencies.<sup>11</sup> While this situation is more general in the states having monopoly plans, it is not restricted to them; six of the states operating under a license system of control have also bestowed exclusive regulatory power upon the state authority.<sup>12</sup>

Under the monopoly plan, the state agency is usually given the following powers: to buy, import, and possess for sale alcoholic beverages of stated alcoholic content; to establish, maintain, or discontinue state stores or to appoint special distributors in lieu thereof;<sup>13</sup> to issue, cancel, and suspend licenses; to determine the nature, form, and capacity of containers; to appoint and dismiss employees for cause; to make all necessary rules and regulations; and to exercise police powers to enforce the law. Several of the states, working under the state-store plan, have run afoul of the Federal Alcohol Control Administration by authorizing

<sup>10</sup> Delaware, Iowa, Michigan, Montana, New Hampshire, Ohio, Oregon, Pennsylvania, Vermont, Virginia, and Washington.

<sup>11</sup> Local agencies assist the liquor control board in Vermont and Virginia.

<sup>12</sup> Arizona, California, Colorado, Connecticut, Indiana, and Kentucky give exclusive authority to the state body, while Illinois, Maryland, Massachusetts, Minnesota, Missouri, New Mexico, New York, Rhode Island, and Wisconsin divide control between state and local agencies. In Louisiana and Nevada, complete administrative power is given to the local divisions.

<sup>13</sup> In keeping with the intent of the monopoly plan to eliminate the profit motive, such distributors are usually paid a definite salary. Michigan, for example, provides that such distributors must be established merchants and must be paid an annual stipend not in excess of \$1200. Iowa sets \$900 as the maximum annual salary; while Ohio permits individual arrangements to be made, provided they involve a fixed salary.

their control agencies to buy on consignment.<sup>14</sup> A few of the monopoly-plan states permit the control authority to manufacture alcoholic beverages. The Virginia law, for example, authorizes the control board to own and operate a distillery if such activity is deemed expedient, while Oregon has authorized its liquor control commission to establish a rectifying plant. The Delaware law provides that the commission may bottle and blend liquor.

Speaking generally, the authority granted to state agencies under a licensing system is similar to that possessed by state authorities under a monopoly plan. The principal differences are with regard to the establishment of state stores, the purchasing and possession of alcoholic beverages, and the fixing of prices. Massachusetts and Rhode Island are the only states using the license system which permit the state authority to deal with price-fixing.<sup>15</sup> Indiana has an unusual provision in that the excise director is given the power to divide the state into districts corresponding to congressional districts, and to limit the number of manufacturers, importers, and wholesale dealers in alcoholic malt beverages in each district.<sup>16</sup> There is a great variety of license and tax requirements in the several states. While ostensibly for the purpose of control, the revenue possibilities have not been ignored. Obviously some license fees have been set with the idea of discouraging the traffic, while others, not so obviously, have been levied with primary consideration given to how much the traffic could bear. At the present time, the license fees for similar privileges vary markedly as one crosses state boundaries. California has a flat-rate distiller's license of \$50, while Pennsylvania provides for distiller's licenses varying from \$2,500 to \$25,000.<sup>17</sup> Some idea of the revenue-producing character of the licensing laws can be gained by an examination of the table on page 632 showing the tax provisions in 27 of the wet states.

One other type of licensing is imposed in a few states—the individual purchasing permit.<sup>18</sup> This device is intended to be a method of control rather than of revenue production. Delaware provides for a personal

<sup>14</sup> Ohio is one of the states whose laws permit the commission to buy on consignment. (The F.A.C.A. prohibits the sale of liquor on consignment.)

<sup>15</sup> The Massachusetts control board is authorized to fix the maximum retail price of beverages, while the Rhode Island commission is permitted to fix maximum wholesale prices.

<sup>16</sup> The law provides that there shall not be more than one manufacturer for each 150,000 population, nor more than three in any one district; not more than 10 importers' permits per district shall be issued, and there shall be no more than one wholesaler for alcoholic malt beverages in each county of 20,000 or less.

<sup>17</sup> The amount is determined upon the basis of the capacity of the distillery.

<sup>18</sup> Iowa, Montana, New Mexico, Oregon, and Washington.

TABLE I. LICENSE FEES AND EXCISE TAXES IMPOSED BY THE SEVERAL STATES  
 (Note: The variation in each column is a result of differences based upon kinds of liquor unless otherwise indicated.)

State	LICENSE FEES				EXCISE TAX		
	Mfrs.	Wholesalers.	Retailers	Restaurants	Beer	Wine	Liquor
Arizona.....	\$250	\$50-100	\$25	\$50-100	.05 pt.	\$.03 pt.	\$.10 pt.
California.....	1-50	10-100	10-100	50	.62 bbl.	.03 pt.	.10 pt.
Colorado.....	500-1000	1000	25-500 <sup>8</sup>	50	.03 gal. gross	receipts tax	
Connecticut.....	1000	500	50	50	1.00 bbl.	.40 gal.	.75 gal.
Delaware.....	50-3000 <sup>9</sup>			100-300 <sup>10</sup>	.02 gal.	.10	.50 gal.
Illinois.....	500-2500	100-250	50	50 <sup>11</sup>	.25 gal. <sup>1</sup>	.50 gal. <sup>2</sup>	.25 pt.
Indiana.....	250-2500	250-1000	25-100	min.300	.05 gal.		
Iowa.....	250	100					
Kentucky.....	500	100	25	25	1.25 bbl.	1.25 bbl.	.02 gal.
Louisiana.....			Regulated	Subdivisions			
Maryland.....	1000	1000	25-250 <sup>12</sup>	350-750 <sup>13</sup>	over 14 %	1.00 gal.	
Massachusetts.....	2000-5000	500-5000	75-2000 <sup>3</sup>	100-2500 <sup>14</sup>	1.00 bbl.	.10	.40 gal.
Michigan.....	250-5000 <sup>15</sup>			100-300	1.25 bbl.		
Minnesota.....							
Missouri.....	250	200-500	50	50-300	1.00 bbl.	.40 gal.	.80 gal.
Montana.....					.50 bbl.		
Nevada.....			Regulated	Subdivisions			
New Hampshire.....							
New Jersey.....	100-7500	750-1500	200-1000*	350-1500	.003 gal.	.10	1.00 gal.
New Mexico.....	2500	750-1250	50-300 <sup>5</sup>			.25 gal.	
New York.....	500-2500	500-4000	500-1200 <sup>4</sup>	100-1500	.003 gal.	excess profits tax	
Ohio.....	20-1000 <sup>2</sup>	50-1000 <sup>3</sup>		100-1000		retail s.p. 10 %	1.00 gal.
Oregon.....	100-500			100	.62 gal.	.25 gal.	25 % on gross profit
Pennsylvania.....	250-25000		150-600		under 4 %		
Rhode Island.....	1000		200	100-300	1. gal. over	.05 per proof gal.	1.00 gal.
Vermont.....					mfrs. 1.00 per bbl.; wholesalers all profits over 9 % original investments		
Virginia.....							
Washington.....	100-250	250	10 local authorities	25	1.00 bbl.	.25-1.00 <sup>7</sup>	1.00 gal.
Wisconsin.....	250				1.00 bbl.	gal.	

\* Determined as to exact amount by local authorities.

<sup>2</sup> Dependent upon production as well as kind of beverage; includes in addition a per bbl. and per gal. tax in excess of stated production.

<sup>3</sup> Dependent upon quantity sold as well as kind.

<sup>4</sup> Dependent upon population as well as kind.

<sup>5</sup> Dependent upon population as well as kind.

<sup>6</sup> Dependent upon population as well as kind.

<sup>7</sup> Dependent upon alcoholic content.

<sup>8</sup> Dependent upon location.

<sup>9</sup> Dependent upon capacity as well as kind.

<sup>10</sup> Dependent upon population as well as kind.

<sup>11</sup> Local authorities may also license.

<sup>12</sup> Dependent upon alcoholic content.

<sup>13</sup> Dependent upon location as well as kind.

<sup>14</sup> Dependent upon location as well as kind.

<sup>15</sup> Dependent upon local authorities as well as kind.

<sup>16</sup> Dependent upon alcoholic content.

<sup>17</sup> Dependent upon location as well as kind.

<sup>18</sup> Dependent upon location as well as kind.

<sup>19</sup> Dependent upon capacity as well as kind.

purchasing permit which must be secured by individuals who wish to make purchases in excess of a maximum prescribed in the law.

The sale of alcoholic beverages to the consumer is under restrictions differing widely in their stringency. Here, perhaps, more than in any other place, the difference between states operating under a monopoly plan and those under license is made evident. But even in this aspect of control legislation the similarity between the two types of control is more

real than evident. The following table indicates the types of retail sale (besides package sale) permitted in the several states and indicates at the same time the type of control utilized:

TABLE II. STATES PERMITTING SALES FOR CONSUMPTION ON THE PREMISES

State	Type of Control	Where sold
<i>All Liquors:</i>		
Arizona	License	Hotels and restaurants with meals
Delaware	Monopoly	Hotels and restaurants (beer in taverns)
Illinois	License	Hotels and restaurants and taverns
Kentucky	License	Hotels and restaurants with meals
Louisiana	License	Hotels and restaurants and taverns
Maryland	License	Hotels and restaurants and taverns
Massachusetts	License	Hotels and restaurants and taverns
Michigan	Monopoly	Hotels and restaurants (beer in taverns)
Minnesota	License	Hotels and restaurants and taverns
Missouri	License	Hotels and restaurants and taverns
Nevada	License	Hotels and restaurants and taverns
New Hampshire	Monopoly	Hotels only
New Jersey	License	Hotels and restaurants and tavern
New York	License	Hotels and restaurants
Ohio	Monopoly	Hotels and restaurants
Pennsylvania	Monopoly	Hotels and restaurants
Rhode Island	License	Hotels and restaurants (beer in taverns)
Vermont	Monopoly	Hotels and restaurants
Wisconsin	License	Hotels and restaurants and taverns
<i>Beers and Wines Only:</i>		
California	License	Restaurants, etc., with meals
Colorado	License	Hotels and restaurants
Connecticut	License	Hotels and restaurants (beer in taverns)
Indiana	License	Hotels and restaurants
New Mexico	License	Hotels and restaurants
Oregon	Monopoly	Hotels and restaurants with meals
Virginia	Monopoly	Hotels and restaurants
Washington	Monopoly	Hotels and restaurants (beer in taverns)
<i>Beer Only:</i>		
Iowa	Monopoly	Hotels and restaurants with meals
Montana	Monopoly	Hotels and restaurants

Analysis of the table shows that six of the eleven monopoly states permit the sale of all liquors for consumption on the premises of the vendor and that in each case the sale is permitted without meals. The New Hampshire law provides one of the most amusing situations in the entire liquor control picture. While permitting the sale of all liquor by the drink in hotels throughout the state, the law provides that citizens living in dry

local option districts may not patronize their local hotels for the purchase of a drink. Some of the license states, it will be noted, impose the limitation that beverages may be purchased only in conjunction with meals. Special attention might be called to the provision in three of these states that taverns—the new name for the old saloon—may sell only beer.

This attempt to convert an old American institution into a beer garden is also made by legislative provision in two of the states permitting the sale of beers and wines by the drink. Of the eight states restricting the so-called "on-sales" to beer and wine, five are operating under a license system. In this group, California has by far the most restrictive legislation, permitting sales only with meals. The California law has been the object of widespread criticism, and a petition for referendum has been circulated to provide an amendment to the liquor law permitting sale by the drink in public dining rooms.<sup>19</sup> Of the states permitting the sale of beer, Iowa stands alone in permitting the sale of beer by the drink only with meals.

Some of the general restrictions frequently found upon the "on-sale" of intoxicants include the prohibition of sales upon Sundays, holidays, and days of elections, prohibition of the sale of liquor to minors and to intoxicated persons, prohibition of screens and "swinging doors," qualifications as to proximity to schools and churches, and restrictions as to the hours of sale. Here again unique provisions are encountered: Arizona prohibits patrons and employers from purchasing drinks for women employees, and in Massachusetts women are not permitted to be patrons in taverns and may not be served, nor drink alcoholic beverages, therein. Connecticut prohibits hiring women employees in taverns, and Rhode Island makes the seller liable for damages committed by intoxicated persons.

The same general restrictions imposed upon "on-sale" licensees are applied to the licenses granted for "off-sales." It is in connection with "off-sales" that we find the most striking difference between the license and the monopoly states. All of the states having a monopoly plan of control except Delaware provide for "off-sales" of intoxicating beverages, in excess of stated alcoholic content, only by state stores or distributors appointed in substitution for such stores.<sup>20</sup> The proposed Mississippi law provided for county stores under a manager appointed by the state commission, but his salary was to be upon a commission basis.<sup>21</sup>

Among the other states, four provide that licensees for "off-sales" must be engaged in some other mercantile enterprise, and two provide that

<sup>19</sup> *United States News*, Vol. 2, no. 21 (May 29, 1934).

<sup>20</sup> Delaware grants licenses for "off-sales" to groceries, delicatessens, hotels, restaurants, and clubs.

<sup>21</sup> Wisconsin provides that municipal stores may be set up, but none has as yet been established.

licensees must not carry on any other type of business at the liquor store.<sup>22</sup> The remaining states, either by definite statement in the law or by indirection, permit establishments to be licensed without regard to whether they engage in other pursuits. In a few states, limitations have been imposed upon the quantity of liquor which may be purchased for "off-sale" consumption.<sup>23</sup> The Colorado provision prohibiting the licensing of chain liquor stores is unusual enough to warrant mention.

Restrictions upon the right to buy vary from the elaborate provisions of the Delaware law to the simple statement in the Nevada statute that only minors may be refused service. The Delaware law prohibits sale to: (1) individuals convicted of drunkenness, driving while intoxicated, or any other offense caused by drunkenness; (2) persons to whom the commission, after appeal by husband, wife, sister, brother, mother, father, employer, mayor, etc., has forbidden sale; (3) persons who habitually drink to excess; (4) minors (except in the case of beer, where the minimum age is 18 years); (5) or any other person to whom such sale is forbidden. In addition to these restrictions, Delaware prohibits sale of intoxicants by the drink to consumers standing or sitting at a bar, and prohibits purchases in excess of one bottle of spirits or twelve bottles of wine without a special permit.

Many of the states have evolved curious requirements which are of more importance to students of Americana than to those interested in liquor control. One of the most amusing is the application which must be signed by Kentucky purchasers. The law provides that such application shall read as follows: "I do hereby make application for pint, quart, case (strike out all but one) of spirituous, vinous, or intoxicating malt liquor which is purchased by me for medicinal, scientific, mechanical, or sacramental purposes (strike out those purposes for which it is not purchased). I am over 21 years of age and am not addicted to the habit of drink, and I have not, within 6 months prior hereto, been convicted of drunkenness."<sup>24</sup> One might mention many equally strange provisions. The most frequently encountered restriction is the prohibition of sales to minors, intoxicated, or interdicted persons.

<sup>22</sup> Arizona, Indiana, Missouri, and New Mexico. Indiana permits sale only by druggists, while Missouri insists that a licensee must have at least a \$1500 stock of other merchandise to sell.

<sup>23</sup> California prohibits sales in excess of five gallons; Delaware establishes a maximum of one bottle of spirits or 12 bottles of beer or wine; Indiana sets the limit at six quarts; while Kentucky limits sales to not more than one quart of liquor or wine every seven days. Virginia prohibits sale of more than one gallon of spirits at a time, and Wisconsin has a similar limitation. The proposed Mississippi law prohibits sales in excess of 24 ounces every seven days. The Oregon control authority is permitted to establish maximum purchases, but has not exercised the prerogative.

<sup>24</sup> Alcoholic Control Act, Section 7(a).

The twenty-seven states for which the text of the statute was available provide for local option. The exercise of this prerogative is placed under limitations and restrictions which vary from the familiar restriction as to the frequency of local option elections to the Oregon limitation which prohibits dry counties from receiving any share of the state's liquor revenues. This prohibition is significant in view of the fact that seventy-five per cent of Oregon's total liquor revenue is divided among the counties upon the basis of population.

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**Reëlection of United States Senators.** The debates on that portion of the Federal Constitution which relates to the composition of the United States Senate were marked in various state ratifying conventions by some interesting speculations regarding the inclinations and opportunities of members in the upper branch of the proposed legislative body to secure reëlection after one or more terms in office. In the Massachusetts convention, for instance, J. C. Jones stated that if members of the Senate were allowed a six-year term they would be "loathe to leave their places," and would "fall heavy when they came down." James Taylor declared that individuals once elected to the Senate "are chosen forever." In the New York convention, Gilbert Livingston predicted that senators would have a "security of their reëlection, as long as they please," amounting really to "an appointment for life." This view was shared by one of Livingston's colleagues, Melancthon Smith, and by Samuel Spencer in North Carolina.

In striking contrast to the belief that United States senators would be able in effect to convert a term of six years into a life appointment was the opinion voiced by William R. Davie of North Carolina, who, addressing his own state convention on the subject, said: "I take it for granted that the man who is once a senator will very probably be out for the next six years. Legislative influence changes. Other persons rise, who have particular connections to advance them to office. If the senators stay six years out of the state governments, their influence will be greatly diminished. It will be impossible for the most influential character to get himself reëlected after being out of the country so long. There will be an entire change in six years. . . ."<sup>1</sup>

There appears to be no reason to suppose that more than a small minority of the delegates to the state conventions accepted either of these extreme views pertaining to changes in the personnel of the United States Senate. Nor does it seem necessary to state here that, on the whole,

<sup>1</sup> See *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. Comp. by Jonathan Elliot (4 vols., Washington, 1836), II, pp. 45, 48, 286-289, 309-310; IV, pp. 116-118, 122-123.

time has shown that both of them were in error. Yet they suggest, not to say challenge, a careful examination of the records of reelection, and for that reason have been cited above. That which follows is an attempt to present in a summary manner the results of an extended investigation of the history of reelection of senators, from the beginning of the Second Congress through the general elections for the Seventy-third; that is, from 1790 through 1932. The subject proper will be treated under two main headings: general, and the effects of the Seventeenth Amendment. Because of the nature of the study, however, it seems best at this point to explain briefly the general technique by which the basic conclusions were reached.

The primary object was to determine, first, what proportion of those senators whose terms expired within a given time were reelected to succeed themselves; and, secondly, what percentage of them were elected for each of the third, the fourth, the fifth, or whatever the number of terms that may have been represented. The unit used was the six-year interval, or three successive Congresses, corresponding to the length of the senatorial term of office. Inasmuch as the Senate originally was divided into three classes of members whose terms were due to expire at the end of the first, the second, and the third Congresses, respectively, the elections to the second, the third, and the fourth, of course, present all of the pertinent facts for this one period. Thus it logically becomes the first unit. It is to be remembered that the initial groupings in the Senate have been maintained rigidly, that each senator from newly admitted states was placed by design in one of the three classes, and that the entire personnel of the body normally is subject to change completely but once during a period of six years. Consequently, the fifth, the sixth, and the seventh Congresses form the second unit; the eighth, the ninth, and the tenth make up the third; and so on.<sup>2</sup>

<sup>2</sup> The names of the senators are given, of course, in the various directories for successive sessions of Congress. A convenient collection of the necessary data, summarized and arranged by number for each Congress through the Sixty-ninth, is printed as *The Biographical Directory of the American Congress, 1774-1927* (Washington, 1928), issued as 69th Cong., 2nd Sess., House Doc. 783. Unless otherwise designated, all further statements and figures here given are based on one or more of these sources.

It should be explained further that for the purpose in hand a single membership in the Senate is considered only in terms of consecutive periods of service. A reelected member, therefore, is one who has been elected one or more times *immediately* to succeed himself.

The study is meant to be wholly objective. Deaths while in office and resignations or withdrawals from office do not alter the standings of the members concerned at their last previous elections. Purely *ad interim* appointments are not considered. A member chosen in a special election to fill an unexpired term is regarded neither as an old nor as a new member during such an incumbency. If re-

1. *General Data.* Not once, as is possible under the Constitution, has the entire membership of the Senate changed within six years' time.<sup>3</sup> The smallest proportion of senators ever to be reelected was 28.94 per cent, or 22 out of a total of 76, in the period from 1875 to 1881. The largest was 62.63 per cent, or 57 out of a total of 91, being for the three Congresses from 1905 to 1911. Percentages for the remaining six-year periods vary considerably between these two extremes. Thirteen, or 44.82 per cent of the 29 senators who were elected for the Second, the Third, and the Fourth Congresses were old, or reelected, members. During the next six years, out of 32 possibilities, 17, or 53.12 per cent, were reelected; while 2, or 6.25 per cent, were elected for their third consecutive terms. It was for the Eleventh Congress, beginning in 1809, that a member was first elected for a fourth consecutive term; the Nineteenth, in 1825, was the earliest when one was elected for a fifth term; and it was not until 1897, for the Fifty-fifth Congress, that a senator appeared for his sixth consecutive term.

As Professor Beard has so aptly stated, changes in the Senate "come with variations in public sentiment, in the personal fortunes of individuals, and in the policies of parties."<sup>4</sup> An attempt in the present analysis to make due allowance for all such factors would be impracticable. The results which have been obtained, however, do reflect decidedly the variations in public sentiment, or, as one may say, the changing fortunes of political parties at various times. There were more frequent changes in the membership of the Senate, by way of examples, in the period following the Jackson régime; in the Reconstruction era; during and immediately after the second Cleveland administration; with the return of the Democrats to power under Wilson; and, finally, during the Hoover administration. These changes, especially the one last mentioned, are accentuated considerably, moreover, when observed in terms of each Congress rather than in groups of three. It should be noted in this connection,

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selected, moreover, he is considered as holding then only a second term regardless of what may have been the status of the member whom he succeeded. The first members to hold seats in the Senate from newly admitted states, and those from the South following reconstruction after the War between the States, do not figure in the reckoning until at the end of their respective terms. These various irregularities, therefore, do not lower the general average of reelected members, although they do tend to decrease the percentages of the number serving three or more successive terms.

<sup>3</sup> This, incidentally, is true for any six years that may be selected. It is to be understood, however, that unless specified otherwise all references to six-year periods in this discussion denote some one of a group of three Congresses, counted in regular and consecutive order, beginning with the Second; as, for example, the Second, the Third, and the Fourth, from 1791 to 1797, the Fifth, the Sixth, and the Seventh, from 1797 to 1803, etc.

<sup>4</sup> *American Government and Politics* (5th ed., New York, 1930), pp. 239-240.

however, that in so far as information for the whole number is available, fully one-half of those senators who were not reëlected made no efforts to retain their seats; while the ones who died when in office, added to the number who resigned from office, far outnumber those who failed in the attempt to secure reëlection.

Every state in the Union has returned some of its members of the Senate for as many as three consecutive terms. Thirty-five states have elected individual members for four or more terms; 21 states for five or more terms; while six—Alabama, Iowa, Maine, Massachusetts, Vermont, and Wyoming—have elected certain ones for six consecutive terms.

Down through the middle of the nineteenth century, only four individuals had established any unusually long records of service in the Senate. James Hillhouse, of Connecticut, was elected to fill a vacancy in the term ending in March, 1797, and was reëlected for the terms beginning in 1797, 1803, and 1809, but resigned in June, 1810. He therefore was in the Senate during four consecutive terms, although actually a member less than 14 years. John Gaillard, of South Carolina, was elected to fill a vacancy in the term beginning in 1801. He was reëlected four times, and served until his death in February, 1826. Consequently, his membership of only slightly more than 21 years extended into the fifth term. Alabama in 1819 sent W. R. King to the Senate, where he served until his resignation in 1844, a period of little more than 24 years, but also extending into the fifth term. As is well known, however, Thomas Hart Benton had for his time the longest tenure of service in the Senate. He drew a six-year term when Missouri entered the Union in August, 1821, and retained his membership until March, 1851, technically completing five terms.

Individual accounts cannot be given for all the long records of membership in the Senate, which even before the end of the last century had become quite numerous. Counting some of the present incumbents, no fewer than 32 different individuals have sat in that body for portions or all of five, if less than six, terms. In addition to those who have been mentioned, the list includes the following familiar names: Platt of Connecticut, Borah of Idaho, Cullom of Illinois, Hoar of Massachusetts, Nelson of Minnesota, Cockrell of Missouri, Gallinger of New Hampshire, Simmons and Overman of North Carolina, Jones of Nevada, Penrose of Pennsylvania, Anthony and Aldrich of Rhode Island, Sheppard of Texas, Smoot of Utah, and Swanson of Virginia. Senators elected for six consecutive terms were Morgan of Alabama, Allison of Iowa, Frye of Maine, Lodge of Massachusetts, Morrill of Vermont, and Warren of Wyoming. In the case of each of these men, death itself eliminated the possibility of a seventh successive election. Senator Warren's unbroken membership of 34 years and 8 months, extending from March, 1895, was preceded, incidentally, by two years of retirement following a short period of activity.

in another class. For the longest period of continuous service, Senator Allison established a record which as yet has not been broken. Elected for the term beginning in March, 1873, he spent the remainder of his life, 35 years and 5 months, as a member of the Senate.

2. *Effects of the Seventeenth Amendment.* Before the adoption of the Seventeenth Amendment in 1913, it was predicted freely that the system of choosing senators by popular vote would make reëlection more difficult and thus cause a much greater fluctuation in the membership of the Senate. Sufficient evidence of such a belief may be noted in the following summary statement presented by a close student of the subject as a portion of the argument set forth against the proposed change: "Again, the choice of senators by state legislatures has tended to produce a continuity of service, and hence an efficiency based upon long experience in legislative work. . . . But if the effects of popular elections be judged by the results produced in the election of governors and of representatives in Congress, it is clear that the trading of localities, the restless craving for rotation in office, the insistence that prizes be widely distributed, would make it highly improbable that a senator would be given more than one or, at most, two terms . . . for the evidence is incontrovertible that the American people still cherish the notion of rotation in office, and that they are particularly loath to reëlect men for long terms of legislative service."<sup>5</sup> It now remains to determine, if possible, whether this apparently well-founded prediction has been substantiated by the facts.

Roughly, within the last decade prior to the adoption of the Seventeenth Amendment, fully one-half of the states, it is to be recalled, by enacting direct primary laws had established in effect a popular election of their senators. Thus it seems logical to assume that the result of this movement upon reëlections would differ only in degree from that produced by the amendment itself. It is significant, therefore, that in the twelve years from 1899 to 1911 the percentages of reëlections rose decidedly. It is true that for the six-year period 1911-1917, during which the constitutional change went into effect, the movement of these figures was downward. An analysis of the three elections concerned, however, reveals the fact that the averages were lowered by those of 1910 and 1912, which reflected unusual political reverses and witnessed the retirement of several senators who had already served a number of terms. As a matter of fact, the first election after the adoption of the amendment resulted in a higher general percentage of returns to office than that for any previous Congress since 1888.<sup>6</sup> From 1916 to date, also, the general trend for all figures con-

<sup>5</sup> G. H. Haynes, *The Election of Senators* (New York, 1906), p. 226. Professor Haynes accepted the view that the almost inevitable result of popular election, judged in the light of the history of elective offices, would be a shortening of senatorial careers. *Ibid.*, p. 268.

cerned has been upward. Only a very slight recession was produced by the unusually large number of failures of reëlection as the Republican majority dwindled and finally gave way before the Democratic onslaught in the elections of 1930 and 1932.

Assuming that no other forces have operated to counteract its effect upon reëlections, it is apparent, therefore, that the change in the method of selecting senators has not had the expected results, when consideration is given at once to all states in the Union. What is true for the entire nation applies particularly to the most thinly settled states, where on the whole popular election of senators has been followed by even higher percentages of returns to the Senate. This stands in contrast, however, to the most populous areas, in which an opposite trend has prevailed. This is determined by a comparison of the records of reëlection in the 15 most sparsely settled states, and those in the 15 most densely populated ones, as noted for the period since 1881; and it furnishes an interesting sidelight upon that phase of the subject now under review.<sup>7</sup>

At all times between 1881 and 1911, the figures for the percentages of reëlections were higher for the most populous states, largely the industrial East and Northeast, than for the most sparsely settled ones, comprising mainly the mountainous regions of the Far West. The long-time movements in the case of the former were decidedly upward from 1881 to 1905, moreover, while those in the latter were downward. Reversals in the trends for each group set up began, however, in 1905. During the next six

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<sup>6</sup> The percentages of reëlections in 1910, 1912, and 1914 (considering, of course, only those members whose terms expired the following year in each case) were 43.33, 40.62, and 71.87, respectively.

<sup>7</sup> The basis for the selection of these states was, naturally, the population per square mile as given in the United States census reports. The 15 sparsely settled states in 1880 were: Nevada, Oregon, Colorado, Florida, Nebraska, California, Texas, Minnesota, Kansas, Arkansas, Louisiana, Maine, Wisconsin, Mississippi, and West Virginia. As a result of the admission of new states, and shifts in population as well, the composition of this group changed often. At the beginning of the Fifty-third Congress in 1891, for instance, Arkansas, Louisiana, Wisconsin, Mississippi, Maine, and West Virginia were supplanted by six new states: Wyoming, Montana, Idaho, North Dakota, South Dakota, and Washington. According to the 1930 census, the group consisted of Nevada, Wyoming, New Mexico, Montana, Arizona, Idaho, Utah, Oregon, Colorado, South Dakota, North Dakota, Nebraska, Texas, Kansas, and Washington. In 1880, the densely populated states were: Rhode Island, Massachusetts, New Jersey, Connecticut, New York, Pennsylvania, Maryland, Ohio, Illinois, Delaware, Indiana, Kentucky, Tennessee, New Hampshire, and Virginia. Throughout, this list remained rather constant. Only three changes may be noted for the whole period: New Hampshire, Tennessee, and Virginia were replaced by West Virginia, Michigan, and North Carolina, respectively. It should be explained that the shifts made within these two groups of states affected but very slightly at the most the existing trends of percentages for re-elections.

years, which correspond fairly closely, it is to be remembered, with the period in which a number of states adopted direct primary laws, the proportion of reëlections in the densely settled states remained stationary at 60 per cent; while in the thinly settled states it increased from 29.02 per cent to 43.33 per cent. For the six-year period during which the Seventeenth Amendment was adopted, the figures for the populous states definitely sought a lower level, as those for the other group continued their upward swing. Although the numbers of reëlections in the most populous states have increased somewhat since 1917, they have not been nearly as high, on the whole, as they were in the years immediately preceding the change in the method of selecting senators. The figures for reëlections in the sparsely settled states, on the other hand, have risen higher and higher from 1917 to the present, despite the large replacements in the membership of the Senate which resulted from the congressional elections of 1930 and 1932.

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## POLITICAL BEHAVIOR

**Aggressive Behavior by Clients Toward Public Relief Administrators: A Configurative Analysis.** This study of aggressive behavior by clients on public relief in Chicago in 1932-33 is intended to be relevant to two supplementary kinds of political theory. In so far as relations are found between economic changes and political activity, the findings bear upon the theory of political *equilibrium*, which seeks to state the general conditions under which political changes occur. In so far as relations are found which bear upon the diffusion of specific political symbols and practices, the results are pertinent to theories of political *development*, which emphasize the time-bound aspects of political change.<sup>1</sup>

From the equilibrium standpoint, changes in any variable in a total situation involve substitutive changes among the other variables (including the political variables). In general terms, deprivations (such as reduction of income) may be said to precipitate movements toward the restoration of an indulgent environment. When deprivations are inflicted suddenly upon many members of a community, as in economic depression, efforts to reestablish income involve concerted action toward the authoritative patterns and practices of the community (including government). If restitutions in the form of "relief," and presently of "recovery," occur, the former equilibrium is reinstated; but prolonged failure to reestablish income leads to the redefinition of the local equilibrium on a new level (by revolution).

Special interest attaches to the study of those who respond to deprivation by acting with maximum directness upon the environment, since their rôle is so important in political readjustment. We may say that they are probably recruited from among those who have had most experience in asserting themselves in situations of the type now confronting them; and also that they include those who have made relatively large demands on the world, and hence have suffered relatively large recent losses.

Recasting in more definite form for purposes of this investigation, we may say that those who display aggressive behavior toward public relief authorities are probably those who have had most experience with *relief* agencies, and with *government*; that they have previously been assertive against *authority* in general; that they have been experienced in manipulating a *personal* rather than a material environment; that they have made relatively large *demands* on the real world for gratification, and

<sup>1</sup> The self-conscious use of equilibrium and of developmental modes of analysis is included within the *configurative* method of political analysis. This is referred to briefly in Harold D. Lasswell, "The Strategy of Revolutionary and War Propaganda," in *Public Opinion and World Politics*, edited by Quincy Wright (Chicago, 1933), and it is expounded at some length in a volume forthcoming this year.

suffered most substantial recent *deprivations*. The situation in which the relief clients find themselves is thus conceived to elicit behavior which has been organized in earlier situations involving relief, government, authority, and persons; and it is seen as an incident in the sequence of claims and deprivations in the careers of the persons affected.

The findings reported in this paper bear upon theories of political development as well as theories of political equilibrium.<sup>2</sup> Theories of political development emphasize the time-bound and space-bound aspects of political situations, viewing them with reference to the distribution of the principal symbols and practices of political importance. Systematic politics, as one of the writers has said elsewhere, may be conceived as the analysis of the shape and composition of the value patterns of society. Representative values are income, safety, and deference; the élite are those who get the most of any value, and the rank and file get the rest. The ascendancy of an élite is protected by the use of symbols, the manipulation of goods and services, and of violence. Politics is thus viewed as the study of *who gets what when and how*. Political changes of the most importance are those which substantially modify the composition of the élite, and the symbols which they invoke. Such a major change was the Russian revolution of 1917, and one aspect of our problem of correct self-orientation in political analysis is the locating of specific political situations with reference to the diffusion or the restriction of this latest world revolutionary pattern.<sup>3</sup>

The study of aggressive behavior in Chicago in 1932-33 is of interest to theorists of political development since it discloses the situation in a major center of industrial capitalism in the interior of a continent far removed from the radiating nucleus of communism, and remote from defensive dictatorial movements which have restricted the spread of communism in Europe. The year during which these observations were conducted was marked by the emergence of one of the most spectacular of these defensive dictatorships in Europe, bringing the pattern somewhat closer to Chicago, especially in the psychological sense, because of the large numbers of persons of German or Jewish origin.<sup>4</sup>

While several industrial centers in Western Europe were in acute crisis, the extent to which crisis exhibited itself in Chicago was mild indeed.

<sup>2</sup> "Equilibrium" statements will not be carried further; but the data are relevant to the entire theory of human reactions to deprivation. Reference may be made to the abstract of a paper by Lasswell on "The Influence of Prosperity and Depression on Social Attitudes," read before the 1933 meeting of the American Historical Association.

<sup>3</sup> For further elaborations of this point of view, see the lecture first cited.

<sup>4</sup> See Lasswell, "The Psychology of Hitlerism," *Political Quarterly*, July-September, 1933; "The Political Significance of German National Socialism," *Religious Education*, January, 1934.

Rarely did the clients on public relief resort to other than individual symbols and individual efforts to get what they demanded. This comes out very clearly in the sample reported upon in this study; and it is confirmed by supplementary investigations of the organizations in the name of the unemployed, and of organizations which frankly adopted some "revolutionary" name. From the data collected in 1933 we have established some bases of comparison which may be utilized in following the subsequent transformations of aggressive behavior, especially the possible growth or further decline of resorts to organized methods of rendering individual demands more effective. If the center of revolutionary and counter-revolutionary dictatorship moves closer to Chicago, the accompanying redefinitions of behavior may be very clearly exhibited by studies conducted by the present method; if additional layers of the population become "radicalized," we shall see whether their characteristics square with the indications found in the present inquiry.

Events are significant to the political analyst, then, in a twofold sense: they exhibit certain relations between social variables, and they display the diffusion or restriction of the historical symbols in the name of which élites are competing with one another in the time-bound processes of political development. The self-conscious examination of both the equilibrium and the developmental significance of a given situation is included within the configurative method of political analysis which it is the function of the present paper to exhibit.

This particular investigation was conducted by procedures which are in some respects novel. Clients on public relief have an opportunity to display their aggressiveness by their behavior at the complaint desks of the relief stations, where they are permitted and expected to come when anything goes wrong. It was decided to devise a standard method of recording the behavior exhibited by relief clients at one of the principal relief stations in Chicago, and to see whether the "aggressive" group (contrasted with a "submissive" group) was recruited from among those anticipated on the basis of our hypotheses. The missing personal data could be secured from the case records prepared independently. A sample of 100 aggressives and 100 submissives was selected from the total number observed, and their case histories tabulated, with results which are reported here.

## II

The complaints aides at the Halsted district of the Unemployment Relief Service agreed upon a list of adjectives which characterized from their points of observation the range of affect within which the behavior of the relief clients varied. They considered the following kinds of behavior non-aggressive: "requesting," "pleading and complaining," "formal and reserved," "submissive," "confused," "compulsive," or "insistent." They

considered the following kinds of behavior aggressive (including both active and passive types): "demanding," "threatening," "arrogant," "clear cut and concise," "wise cracking," "loses control," and "curries favor." Each one of these adjectives was abbreviated by a letter of the alphabet. The behavior of a client making a request might thus be characterized as CDH, which would indicate that he had demanded, threatened, and had spoken in a clear-cut and concise manner. The sampling was selected from those clients with whom there were five or more rated contacts.

In order to determine the reliability of the procedure, one of the aides observed the interviews of the other four and recorded his impressions from these simultaneous observations. This check experiment revealed that while ratings varied from aide to aide in terms of the degree of completeness with which a reaction was recorded, there was no single instance in which the checking aide regarded behavior as aggressive and the other aide non-aggressive, or the converse. Examination of the census data for 1930 was made in order to determine the representativeness of the sampling. Checking the sampling with the community by means of such indices as population composition, occupation, home-ownership, and rental revealed that the sampling fell within the community norms.

### III

The first hypothesis as to a possible differential between the aggressives and the non-aggressives related to the degree of familiarity achieved through length of contact with the Halsted district of the Unemployment Relief Service and agencies similar to it in purpose and procedure. Tabulation of the data revealed that the bulk of the aggressives made first application during the eighteen months from July, 1931, to December, 1932. The bulk of the non-aggressives made application during 1933. Taking broad averages, the typical aggressive would have had the advantage of two years' experience with the Halsted district office, the non-aggressive but one year.

Tabulation of the data relating to previous experience with welfare and relief agencies indicated that 60 per cent of the aggressives had contact with social agencies between 1911 and 1930 and 68 per cent of the non-aggressives between 1930 and the present. The typical aggressive had contact with welfare and relief agencies dating back to 1926, the typical non-aggressive since 1930. The first hypothesis, therefore, relating to previous experience with similar public and private agencies was documented rather impressively by the above summarized differentials.

### IV

The relationship at the relief office was judged, secondly, as one of applicant and government. And previous contact with government of whatever nature it might be would play a predisposing rôle in the kind of be-

havior evoked in such an institution. Government as defined here includes party authorities, such as precinct captains or ward committeemen. Both frequency and type of previous contact with government are relevant. Governmental or party authorities could have played an indulgent rôle by giving them jobs, interceding for them at the relief office, or conferring bonus or disability allowance for war service. Governmental authority could have played a penalizing rôle by imposing sanctions in all degrees of severity; and it could have played an impartial rôle, granting citizenship, calling to jury service, or judging between parties in civil suit.

TABLE I. POLITICAL JOBS

Kind of Employment	Per Cent	
	Aggressives	Non-Aggressives
Election canvassing and employment	9	0
Permanent job	11	1
None	80	99

Table I indicates that 20 per cent of the aggressives had some kind of government employment as opposed to 1 per cent on the part of the non-aggressives. Of this number, 11 per cent of the aggressives had had relatively permanent work with some governmental agency. This clear differential can be interpreted as yielding two insights into the problem. First, the aggressive had seen government from the "inside," second, he had so manipulated politicians in the neighborhood that he was rewarded with this employment.

TABLE II. POLITICAL INTERCESSION

Number of Letters	Per Cent	
	Aggressives	Non-Aggressives
1	7	4
2	6	1
3	3	0
4	1	0

A similar interpretation would hold for Table II, where, it appears, 17 per cent of the aggressives as opposed to 5 per cent of the non-aggressives had resorted to political intercession at the relief station. The differential is even more impressive if one considers the frequency of intercession, for the ratio would then be 27 per cent to six per cent. Here, contact with authority in the form of precinct captains, aldermen, ward-committeemen, state senators and representatives, and federal congressmen would indicate first, evidence of familiarity with authority,

and second, evidence of the facility of the aggressives in exploiting the available manipulative techniques.

The question arises as to what would be the predisposing effect of a penal contact with government. Here we are dealing with an offender against that part of the *mores* which has been crystallized in law. Such an offense is penalized in all degrees of severity. Presumably the gravity of the offense would be commensurate with the severity of the punishment. We may therefore consider the following tables in terms of the degree of the penal sanction, assuming that the gravity of the offense would be indicative of the degree of aggressive behavior involved in the offense.

TABLE III. PENAL CONTACTS WITH PUBLIC AGENCIES

Number of Contacts	Per Cent	
	Aggressives	Non-Aggressives
0	78	89
1	15	8
2	5	3
3	1	0
4	1	0

Table III records penalties applied by family governmental agencies such as the Court of Domestic Relations, the Juvenile Court, or the Juvenile Protective Association. The sanction may be in the form of an admonition, close supervision of the family, and in some cases imprisonment for desertion or for non-payment of alimony. The supervision of the children by the Juvenile Court or the Juvenile Protective Association usually involves some punishment of the parent or parents, as taking the children out of the home or subjecting the home to close supervision. We find 22 per cent of the aggressives with one or more contacts with these or with similar agencies, contrasted with 11 per cent on the part of the non-aggressives. Differential damage at the hands of these agencies can be interpreted as contributing to aggressive behavior in so far as contact with governmental authority would render it a more familiar symbol; damage at its hands would provoke resentment toward government; and offense would indicate earlier aggressive behavior.

TABLE IV. OFFENSE AGAINST "MORES"

	Per Cent	
	Aggressives	Non-Aggressives
Offense	37	7
Arrest	20	3
Imprisonment	11	2

The offenses recorded in Table IV are those for which there are penal sanctions, some of which have not been applied, possibly because of clemency, non-discovery, or non-apprehension. The ratio of 37 per cent to 7 per cent for the incidence of offense among the aggressives as contrasted with the non-aggressives yields a clear differential in respect of this important factor. The differential of 20 per cent to 3 per cent in arrests and 11 per cent to 2 per cent in imprisonments is again significant as indicating the gravity of the offense; for these are offenses against the *mores* in respect of which some penal sanction has been taken.

Contact with the courts in civil suits and evictions was also judged as a predisposing factor in the orientation of the client in the relief agency. Tabulation of this data indicated a ratio of 29 per cent to 19 per cent with respect to such contact. Being a party to eviction proceedings or a defendant in a civil suit would involve, because of the poverty of the individuals under consideration, some loss or damage through the agency of government. It is a tenable hypothesis that such damage might be attributed to government, and serve as a source of resentment of governmental authority.

## v

Certain of the relationships between aggressiveness and governmental authority were explored in the previous section. It would also follow that conflict with non-governmental authority and with non-legal *mores* would predispose toward aggressive behavior, and might be further assessed as playing a rôle in its evocation or aggravation. Non-governmental authority refers to family, church, occupational, and similar relationships—parents, priests, employers. It refers also to uncodified usage and social bias, the sanctions for which are less palpable. The early family history of these individuals not being readily available, only a few of the many possible indices were isolated.

The following offenses against the *mores* or authoritative standards were considered as revealing indices with respect to differential anti-authoritarian behavior on the part of the aggressives: 10 per cent of the aggressives as contrasted with 1 per cent of the non-aggressives had offended by drunkenness and disorderly conduct; 4 per cent of the aggressives as contrasted with 1 per cent of the non-aggressives were guilty of petty thefts; and 16 per cent of the aggressives as contrasted with 2 per cent of the non-aggressives had deserted their families one or more times.

Intermarriage and church attendance were also considered as relevant indices to previous anti-authoritarian behavior which would predispose an individual in dealing with an authoritarian agency. The only two recorded cases of intermarriage which would involve a grave flouting of authority were found among the aggressives, a white-colored intermarriage and the marriage of a Jew and a Gentile. Seven per cent of the

aggressive religious intermarriages were between Protestants and Catholics as contrasted with none on the part of the non-aggressives. Thirteen per cent of the aggressives married outside their nationality as compared with 5 per cent of the non-aggressives. In summary, 26 per cent of the aggressives, as compared with 8 per cent of the non-aggressives, had married outside their affiliations. We have here an index, first to anti-authoritarian, anti-*mores* behavior, and second to the relatively wider range of social affiliations within which the aggressives operated.

The neighborhood from which the sampling was taken was one in which church attendance is more or less taken for granted. Consistent non-attendance would thus represent a relatively serious break with the community norms. Here, 6 per cent of the aggressives, as contrasted with 1 per cent of the non-aggressives, had made such a break.

#### VI

The relationship between complaint aide and client has been predicated as first, a relief, second, a governmental, third, an authoritarian, and fourth, a personal relationship. What background factors would lend facility to the client in manipulating a personal, in contrast with a material, environment? Three factors were judged to be peculiarly relevant, and many of the above and following indices may be used as cross-references. The first relationship which was considered as of high significance in rendering an individual more facile in dealing with persons was the occupational. A distinction can be drawn between occupations in terms of the kinds of objects upon which the individual operates, whether these be persons or machines and materials, whether an individual is a salesman, a foreman, a street car conductor, or a mechanic, a machine tender, a common laborer. Seventeen per cent of the aggressives, as contrasted with 9 per cent of the non-aggressives, dealt with persons in their occupations.

The second factor which was considered of primary importance was formalized collegial affiliations such as union and lodge memberships. Here presumably would be an opportunity for an individual to acquire facility in articulating his demands, besides the acquisition of supporting collective symbols and familiarity with organizational complexities. Twenty-four per cent of the aggressives, as contrasted with 9 per cent of the non-aggressives, were members of trade unions.

Education also would constitute a revealing index to the acquisition of such a significant skill in dealing with persons as verbal facility. Although the educational level was uniformly low for the sampling and the neighborhood, 45 per cent of the aggressives, as contrasted with 10 per cent of the non-aggressives, had completed grammar school.

The material presented above records the relative skills acquired by aggressives and non-aggressives through contact with welfare, govern-

mental, authoritarian, and personal entities. It was thought that the incidence and nature of such contact would by frequency serve as an index to aggressive behavior, by rarity serve as an index to non-aggressive behavior. It was thought further that the relative frequency of such relationships would serve to evoke latent aggressiveness, through augmenting familiarity, and through damage and deprivation. It was further considered that damage at the hands of formal governmental agencies, or authoritarian agencies, authoritarian conflict of whatever nature it might be, might serve to render an individual aggressive, or potentially active politically. The first four hypotheses thus indicate the experiential factors which would predispose behavior in a specific relationship which has been characterized, first, as public welfare authoritarian, second, as governmental authoritarian, third, as authoritarian, and last, as interpersonal. And the above tables reveal a clear differential in favor of those individuals who were characterized as aggressive by the ratings of the complaint aides.

## VII

The situation was also defined in the preliminary hypotheses as one of demand and deprivation, and the demand and deprivation history of the client would play a significant predisposing rôle in the evocation of aggressive behavior. Under this heading of claims, or demands and deprivations, are considered the income, debt, and wealth history, the relative familiarity with the environment, the age range, danger in or shifts in occupation, and physical and psychic damage. The claims or demands referred to are those made upon the real environment, upon the socially defined goods and services.

Tabulation revealed that the majority of the aggressives earned incomes between \$21 and \$40 a week, the majority of the non-aggressives between \$10 and \$30. The relative wage of the aggressives and the non-aggressives would serve as an index, first, to their differential demands upon the values in society, second, to their skill in asserting these demands, and last, to their differential damage through unemployment and application for relief.

Six per cent of the aggressives and 1 per cent of the non-aggressives had formerly occupied some managerial position. This contrast would seem to reflect, first, relatively higher claims upon income and prestige, relatively higher skill in assertion, and relatively more grave damage by the present reversal of rôles.

A supporting index to differential claims, skills, and deprivations is revealed in tabulation of rentals before and after application for relief. The majority of the aggressives paid rentals between \$16 and \$25 before application for relief, between \$11 and \$20 after. Among the non-aggres-

sives, we find the majority paying rentals before application from \$5 to \$20 and after application from \$5 to \$15.

Tabulation revealed that the average age of the aggressive was 35 years, that of the non-aggressive 42 years. The majority of the aggressives were between 31 and 35 years of age, of the non-aggressives between 41 and 45. The older the individual the more have his aims and wants been circumscribed and defined. The aggressives thus falling into the younger category would be more likely to over-assert their claims, since their orientation has been less well defined.

Relative familiarity with the environment would exercise some effect upon claims and skills in assertion. How can this particular social context be characterized? First, it is an American community, second, it is an urban community, and last, it is an industrial community. Presumably those individuals who had spent the larger part of their lives in an American, urban, industrial community would, first, have higher claims upon the values, and, second, relatively more skills in asserting those claims, since the language and usage of the community do not constitute an obstacle. It was our hypothesis, therefore, that as the background of an individual was in degree dissimilar to the one in which he is at present placed, so in proportion his claims and his skills in assertion would diminish.

Seventy-one per cent of the aggressives, as contrasted with 42 per cent of the non-aggressives, were native-born. Of the non-aggressive total, 26 per cent were Negroes, deriving in great part from Southern rural communities. The contrast between 71 per cent and 42 per cent for the incidence of foreign and native origins becomes more impressive when one examines Table V.

TABLE V. URBAN-RURAL ORIGINS (MOBILITY)

	Per Cent	
	Aggressives base 71	Non-Aggressives base 42
Metropolitan areas	58	18
Midwest urban	20	6
Midwest rural	5	9
West urban	1	0
West rural	0	0
East urban	0	0
East rural	0	0
Southern Negro urban	8	18
Southern Negro rural	1	45
Southwest white urban	5	0
Southwest white rural	2	4

Here we discover that 92 per cent of the native-born aggressives, as contrasted with 42 per cent of the native-born non-aggressives, came from urban areas. Fifty-eight per cent of the aggressives, as opposed to 18 per cent of the non-aggressives, were born in metropolitan industrial areas. These sets of figures would seem to document the hypotheses stated above that as the background of an individual was in degree dissimilar to an American, urban, industrial, social context, so in proportion his claims and skills in assertion would diminish.

The clear differential as to real property ownership on the part of the non-aggressives, revealed by the tabulation of 23 per cent to 9 per cent, indicated the manner in which the non-aggressives, faced with a confusing social context, make their claims upon values. The figures do not represent real property promotions, but the purchase of small homes, heavily encumbered and constantly threatened with foreclosure. This application of the peasant-rural pattern in a new social context reveals an immigrant, peasant, non-aggressive trait, the trait of seeking orientation in the soil of the relatively unstable, urban, industrial environment. The claims of the non-aggressive would seem to be timid, or minimal, as contrasted with those of the non-aggressives.

TABLE VI. CITIZENSHIP

	Per Cent	
	Aggressives	Non-Aggressives
By birth	71	42
Naturalization	22	41
First papers	6	4
No attempt	1	13

In Table VI, the figures on citizenship are recorded. Citizenship here is interpreted, first, as a skill in orienting one's self in a new social context, second, as a contact with government, and lastly, as an index to relative attachment to old loyalties. The most significant figures are those listed under "no attempt," where the proportion of 13 per cent to 1 per cent in favor of the non-aggressives, would, despite the greater proportion of foreign-born in this category, seem to indicate the relative reluctance of the non-aggressives in making new formal allegiances and their relative unfamiliarity with a new social context.

Having endured danger in one's occupation would be of primary importance in rendering an individual at ease and articulate in a situation of threat or danger. Presumably damage by depression would constitute such a threat, and the relief situation with all its uncertainties would have similar elements. Sixteen per cent of the aggressives, compared with 5 per cent of the non-aggressives, had worked in occupations considered as "dangerous," judging by the high life insurance rates.

A tabulation of occupational mobility revealed that 28 per cent of the aggressives, as opposed to 13 per cent of the non-aggressives, had three or four shifts in occupation. Greater mobility in occupation serves as an index to a relatively greater number of skills, to relatively wider social affiliations, and to relatively higher claims upon values.

Six per cent of the aggressives, as compared with none among the non-aggressives, had been characterized in the case records as neurotics. Ten per cent of the aggressives, as compared with 6 per cent of the non-aggressives, suffered from some permanent physical impairment. Such physical and psychic damage is commonly interpreted as resulting in over-compensation, one of the forms of which would be over-assertion, or aggressiveness.

#### VIII

This research may be summarized as to method, technique, and findings. The method of configurative analysis dictated the choice of the problem, and the consideration of the details with reference to theories of political equilibrium and to theories of political development. The technique of field observation by participant observers coming into frequent but casual contact with the persons studied is capable of being widely adapted and extended. The findings bear upon the theory of political equilibrium, rendering more definite the characteristics of those who are active in relation to the social environment when deprivations are inflicted upon them (in this case, withdrawal of income). Aggressive acts were studied in relation to an indulgence (relief) situation which was afforded to those whose incomes were wiped out, and whose reserves were depleted. Aggressiveness was found to be most frequent among those who were familiar with this particular type of situation, and with government. Aggressiveness was also frequent among those whose careers showed the greatest deviations from conventional behavior, and who were most experienced in managing a personal environment. Aggressiveness was frequent also among those who in the past had made relatively large and successful claims on the world for the available values (such as income), and whose deprivations were both large and recent. This should be qualified by saying that the persons studied were not recruited from those who in prosperous times were in the upper income brackets of the community; but within the lower income layers, the relationship between substantial income and assertiveness in deprivation is clear.

The findings also bear upon a developmental theory of politics which seeks to construe political details in relation to the center of origin and diffusion of the latest world revolutionary pattern, and in relation to the next world revolutionary center and pattern. The data show how little affected the community remained by the revolutionary slogans and

practices, and by the defensive dictatorial movements in and around the Soviet Union. Those who behaved aggressively were rarely affiliated with organized movements of collective protest, and rarely invoked collective symbols to reënforce their private demands. The present technique of observation could be re-applied through time in order to gauge the rise or fall of concerted and of private aggressiveness.

More intensive case studies will disclose more minute circumstances which generate aggressiveness; more extensive observation of collective behavior will keep these intensive researches in sound relation to the distribution of typical incidents along the career lines of those who live in a given culture at a given period. Certain of these concurrent studies are in progress.

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**The Revolutionary Logic of the General Strike.** Spanish and Cuban events during the past three years, and the recent labor disputes on the Pacific coast, have once again brought the general strike into the lime-light. The abdication of King Alfonso and the flight of President Machado showed the potentialities of a successful general strike when labor faces the revolutionary logic of that weapon. The San Francisco *débâcle* proved the futility of that method when labor refuses to admit its revolutionary implications.

Ten years of intensive study of the general strike, as used by labor over a century of time, on every continent in the world, have impressed upon the writer the tragic fascination which this double-edged weapon possesses for the workers, whenever they are unable to find adequate expression for their grievances through normal, constitutional channels. Nearly two score serious general strikes have occurred in these hundred years. Scarcely a European nation of importance has escaped at least one experience. National and racial groups as varied in temperamental make-up and efficiency of labor organization as Great Britain, Italy, Argentina, and China have used the weapon, which must, therefore, be accepted as a technique of protest worthy of attention by political scientists. The

<sup>1</sup> Acknowledgment for coöperation which made the completion of this study possible is due primarily to Miss Sonya Forthal, of the University of Chicago, who contributed both to the formulation of problems and to the reading of case-records. Thanks are due also to Mrs. J. D. Twitchell and Miss Margaret Diers, both supervisors of the Halsted district of the Unemployment Relief Service during the progress of this investigation; to Mr. Joseph L. Moss and Mrs. Edward J. Lewis, director and assistant director, respectively, of the Cook County Bureau of Public Welfare, who permitted the investigators to read the case-records; and to the complaint aides who consented to make the ratings over the six-month period.

writer is concerned in this article with exposing the implicit revolutionary logic contained in even the most peaceable general strike.

In every general strike, organized labor sets up a dual or rival government, by the purposeful and general cessation of its normal functions. When workers in a single trade or industry go on strike, this revolutionary logic is seldom involved, unless a vital public service is affected, such as the police force or hospital and medical service. It is when a strike takes on the gravity of a general cessation of work that it contains a tacit challenge to the continued functioning of social life and thereby brings in against it the forces of the existing government. It is then that an incipient rival government can be found, no matter how orderly the strike may be, nor how fervently its leaders proclaim their non-political aims.

In popular usage, the phrase "general strike" is applied carelessly to any generalized strike in a single industry, such, for example, as a nationwide strike in the textile or mining industry. At the other extreme, it is contended, by Professor E. T. Hiller in the United States and by followers of Georges Sorel in Europe, that no really general strike has ever occurred, or indeed could ever occur; that it is in fact only a social myth, useful to stir the mass emotions of the workers in the perpetual class struggle.<sup>1</sup> It seems to the writer that such an attitude overlooks the practical facts of life. It seems fair enough to hold, with the late Jean Jaurès, that when a majority of the workers in the key industries of a region or a nation cease work, then for all practical purposes there exists a general strike.<sup>2</sup>

For purposes of discussion, the writer has classified general strikes, so defined, into three types, (1) economic, (2) political, and (3) revolutionary. Any one of these may change gradually or swiftly into one of the remaining two. The criterion of classification in every case is the expressed aim of the strike, as found in the statements of responsible labor leaders.

The economic general strike is, in its inception, a protest against some real or imagined economic injustice to fellow workers. Some criticism may be made of the two remaining types, as both being political. This is true enough in the larger sense. But for practical purposes a real distinction is made by strike leaders themselves between the *political* general strike, which "directs its efforts against the State," yet "does not seek to transform society, but rather to make the political masters yield," and the *revolutionary* general strike, in which the leaders aim from the outset to introduce confusion into the life of the State and overthrow the existing order. In this distinction, the strike leaders have the support of such writers as Roland-Holst, Werner Sombart, and Trotsky.<sup>3</sup>

<sup>1</sup> E. T. Hiller, *The Strike*, Chap. xx; Sorel, *Reflections on Violence*, pp. 2, 136.

<sup>2</sup> In Lagardelle, *La grève générale et le socialisme*, pp. 97-99.

<sup>3</sup> Roland-Holst, *Generalstreik und Sozialdemokratie*; Sombart, *Der Proletarische Sozialismus*, II, p. 241; Trotsky, *Russland in der Revolution*, p. 228.

It would be superfluous, by the very definitions used above, to argue the existence of a rival government where a revolutionary general strike is concerned. The Hispanic nations of the old and the new world, Italy, and Russia provide ample instances of this type of general strike. It is not so simple a matter to prove the implicit revolutionary logic behind the political general strike. Twenty years ago, Ramsay MacDonald somewhat reluctantly admitted that the general strike might be used "for political purposes . . . to secure some specific demand, say the extension of the franchise, the resignation of a government, or the defeat of a war party," but added that "in the nature of things, before the strike can be successfully declared the grievance which it is aimed to remove must have become intolerable."<sup>4</sup>

In similar manner, the German Social Democrats, in their congress at Jena in 1905, approved of the general strike weapon for uses that were not of a distinctly revolutionary character: "In case of an attack on universal, direct, equal, and secret suffrage, or on the right of combination, it is the duty of the entire working class to employ vigorously every weapon of defense that seems appropriate. As one of the most effective weapons to repel such a political crime against the working class, or to capture an important right as a basis for its emancipation, the congress recommends in the case given, *the most comprehensive application of the general refusal to work.*"<sup>5</sup> Despite the careful limitation thus set to the use of the general strike as a political weapon, in many, if not in all, such strikes there can be found an undercurrent of criticism of the existing form of government, with the implication that stronger, perhaps even more revolutionary, methods would be used if the more orderly political strike should fail.

Two instances out of many must suffice to point the argument. During an Italian general strike which occurred some thirty years ago, in protest against the use of the military in labor disputes, the Milan Chamber of Labor endeavored to persuade the proletariat that it had become the "supreme mistress of the nation." An editorial in the strike bulletin averred: "The Chamber of Labor, in the name of the Milanese proletariat, has virtually taken possession of public power, and now practically works the administrative and political mechanism of the town, which facts assume a profoundly revolutionary significance, showing the proletarian capacity to manage the proletarian commune. Milan resists, Milan is in the streets, Milan proclaims the cessation of work, Milan imposes the general strike on Italy. Milan is no more the town of all, but the town only of the proletariat."<sup>6</sup>

<sup>4</sup> *Syndicalism*, p. 61.

<sup>5</sup> Spargo, *Syndicalism, Industrial Unionism, and Socialism*, Appendix, p. 216.

<sup>6</sup> S. Cortesi, *Independent*, Dec. 15, 1904, p. 1390.

The second instance is taken from the conservative records of organized labor in Great Britain in 1920. In the face of an imminent outbreak of war between Soviet Russia and Poland, with the probability that British armed forces would also be involved, the Labor party and the trade union executives hastily formed a "council of action" to prevent war, if need be by the complete cessation of labor throughout Great Britain. At the convention constituting this council of action, Mr. J. H. Thomas of the railwaymen's union, later a member of two British cabinets, urged the adoption of the resolution, strong opponent as he was of direct action for any ordinary purpose, political or economic. "When you vote for this resolution," he declared, "do not do so on the assumption that you are merely voting for a simple down-tools policy. It is nothing of the kind. If this resolution is to be given effect, it means a challenge to the whole constitution of the country."<sup>7</sup>

It is far more difficult to prove the economic general strike revolutionary in its basic logic, particularly in those instances in which the strike leaders frantically assert the strictly economic aim of the dispute, as was the case in the British national strike of 1926. The economic general strike grows out of a smaller dispute, where it is possible to make very clear to vast numbers of workers in other industries the economic injustice involved in the original struggle. A sympathy strike of this type calls for more undiluted sacrifice by all workers not concerned in the original dispute, for in this type of general strike the vast majority stand to lose a great deal in wages and in security of employment, but to gain nothing for themselves, not even the right to vote. The issue, therefore, must so clearly appeal to all wage-workers as to approach closely to the issue of the class struggle.

The purpose underlying an economic general strike is evident to any dispassionate observer. It is to force the general public, who are not taking part in the strike, to become umpires between the ranks of striking workers on the one side and the massed forces of capital and the government on the other. Labor usually fails to recognize, however, that the general public will not long remain content to hold the rôle of umpire, once its own position becomes uncomfortable or perilous.

The leaders of an economic general strike do not have to act as if they

<sup>7</sup> A. G. Cameron, then chairman of the Labor party's executive committee, was even more explicit in his speech. "If the day should come," he said, "when we do take this action, and if the powers that be endeavor to interfere too much, we may be compelled to do things that will cause them to abdicate, and to tell them that if they cannot run the country in a peaceful and humane manner without interfering with the lives of other nations, we will be compelled, even against all constitutions, to chance whether we cannot do something to take the country into our own hands for our own people." Cf. the Council of Action, Report of Special Conference on Labor and the Russo-Polish War, pp. 16, 18.

felt themselves to be a rival government. It is enough that the strike orders, given by them to the labor ranks, should in effect select the essential public services that shall continue to function. To discover the rival government in action, it is therefore necessary to turn to the interpretation of the general strike orders by the ranks of labor. Evidence will be found most abundantly in the granting or withholding of permits to work issued by the various strike committees, and in the conception of their own function held by those committees.

Four outstanding examples of a strictly economic general strike provide ample data for the discussion in hand, occurring in Sweden in 1909, in Seattle and Winnipeg in 1919, and in Great Britain in 1926. In all four instances, many citizens and most newspapers believed that the strike was the beginning of a revolution. In actual fact, this fear was not justified by the behavior of the strikers. Even in Winnipeg, where alone serious riot and disorder occurred, the struggle did not become violent until six long weeks of strike had passed.

An increasing use of the lock-out weapon by the Swedish employers' associations in 1909 caused the Federation of Labor (*Sveriges Landsorganisation*) to declare a general strike. At the same time, the Federation made significant gestures of governmental authority by deciding what kinds of labor should be exempted from the strike call. All whose task was the care or transportation of the sick or the care and feeding of animals were to continue at work. In each instance, the exempted workers received special permits from their local strike committees, lest any suspicion of treachery to their fellow-workers should fall upon those who did not strike. The strike committees went so far as to raise and control their own special police force, allegedly for the purpose of preserving order during the strike. The president of the Socialist party urged that the strikers' attitude be such as to provoke the favorable intervention of the people as a whole. The Swedish government recognized the serious challenge to its authority and refused to take any mediatory step so long as the strike remained general, inasmuch as such a strike was a threat to the continued functioning of society.<sup>8</sup>

In Seattle, a startling editorial appeared in the daily labor paper, the *Union Record*, shortly before the strike broke out: "Labor will feed the people! Twelve great kitchens have been offered, and from them food will be distributed by the provision trades at low cost to all. Labor will care for the babies and the sick! The milk-wagon drivers and the laundry drivers are arranging plans for supplying milk to babies, invalids, and hospitals, and taking care of the cleaning of linen for hospitals. Labor will preserve order. The strike committee is arranging for guards and it is expected that the stopping of cars will keep people at home. Not the

<sup>8</sup> W. H. Crook, *The General Strike*, pp. 124-138.

withdrawal of labor, but the power of the strikers to manage, will win this strike. Labor will not only shut down the industries, but labor will reopen, under the management of the appropriate trades, such activities as are needed to preserve public health and public peace. If the strike continues, labor may feel led to avoid public suffering by reopening more and more activities, under its own management."

City firemen were instructed to stay at their posts, garbage-wagon drivers were told to collect garbage, but to leave ashes and paper. Auto drivers might drive the mail and answer emergency calls for funerals and hospitals, if those calls were made through the office of their trade union. A police force of unarmed war veterans was organized to aid the strike committee in the preservation of order.

Popular recognition of the de facto government of the strike committee was evident, the *Nation* reported: "Before the committee appeared a long succession of business men, city officials, and the mayor himself, not to threaten or bully, but to discuss the situation and ask the approval of the committee for this or that step. Heads of business houses, little used to asking permission of employees under any circumstances, wrote formal, courteous letters to the committee, exactly as they would have written to any recognized municipal official or department, setting forth their reasons why some business operation should be allowed to go on, and asking the privilege of continuing it."<sup>9</sup>

During a speaking tour in the East, Mayor Ole Hanson declared of the struggle in his city: "The general strike, as practised in Seattle, is of itself the weapon of revolution, all the more dangerous because quiet. To succeed, it must suspend everything; stop the entire life stream of a community. That is to say, it puts the government out of operation. And that is all there is to revolt, no matter how achieved."<sup>10</sup>

In Winnipeg, the general strike was longer and more stubborn than in Seattle, and no attempt was made by labor to run the public services. The strike committee saw the logic of its position and recognized that the government and the citizens must be responsible for the vital public services, if they were to run at all. The only exemptions from the strike order, as far as the first day was concerned, were the members of the police force and the workers in the domestic water-supply plant. Workers in the high-pressure water plant, in the light, power, and street cleaning departments of the city, even in the fire department, were all called out. The only telegraphic messages allowed to pass were those concerned with health, the moving of troop trains, or with business of the provincial government. On the second day of the strike, the strike committee, having shown its power, ordered back to work the milk and bread delivery men, but with special signs exhibited on the sides of their autos,

<sup>9</sup> March 29, 1919.

<sup>10</sup> *Boston Herald*, Feb. 17, 1919.

"Permitted by Authority of the Strike Committee." But for a strong citizens' organization of volunteers, the city would have been in a sorry plight before the power of the organized strikers.

The greatest economic general strike in labor history occurred in Great Britain in May, 1926, the result of long-standing troubles in the coal-mining industry. Responsible leaders of the general council of the Trades Union Congress emphatically denied that they were attacking either the government or the general public. Constantly the strike sheet, the *Daily Worker*, emphasized the purely industrial aspect of the dispute. Nevertheless, the same evidence of the existence of a rival government can be found in the acts of the various strike committees.

The Rt. Hon. Winston Churchill declared that British labor was prepared with a scheme for paralyzing the nation. Nothing was farther from the truth. The government itself was thoroughly prepared and at least two strong citizens' groups had been organized to meet the general strike peril many weeks before it occurred. Labor alone was appallingly unready to face the logic of its action. Its plans were in chaos until two days before the strike actually commenced. Even then, a further forty-eight hours were required to untangle the maze of orders and counter-orders issued from the London headquarters of the strike.

The London labor leaders offered to run enough trains and road transportation to feed the nation, a sample of their refusal to face the problems of a really effective general strike, and yet in itself a significant instance of their tacit assumption of authority. Churchill's reply indicated that the government, of which he was an important part, had no illusions as to such an offer. "What government in the world," he asked, "could enter into a partnership with a rival government, against which it is endeavoring to defend itself and society, and allow that rival government to sit in judgment on every train that runs and on every lorry on the road?"<sup>11</sup>

The leaders of the railwaymen's unions saw the issue more clearly. They ordered their members to cease work on *any kind of traffic*, food or merchandise. They recognized that if trains were to run, the government must find other hands to run them. When the strike was over, Mr. C. T. Cramp, industrial secretary of National Union of Railwaymen, addressing his own members, admitted that the struggle really had been directed against the government.<sup>12</sup> The London strike leaders offered further evidence of their assumption of governmental authority when they ordered the local strike committees throughout the nation to provide light and power for

<sup>11</sup> *Hansard*, May 3, 1926, col. 123.

<sup>12</sup> "Although denials were made that this was a struggle against the government, it obviously was such a struggle. The mine-owners were not affected by a strike of men other than miners. It therefore was a struggle to compel the government to take action." *Railway Review*, June 18, 1926, p. 3.

"house, street, and shop lighting, for food, bakeries, and laundries." The technical ignorance behind such an order was at once made apparent by the electrical unions, and the men were thereupon ordered back to work by the London leaders.

A few examples of local assumption of authority by strike committees must complete this argument. The Birmingham strike committee granted exemption permits only to what they considered essential services, and then only when run by union labor. Coal for hospitals was allowed transportation, but permits were refused to cement, sewer pipes, and brass dressing. In one district of northern England, beer was declared a non-essential by a dry strike committee, a decision which caused immediate friction between that committee and the local coal miners, on whose behalf the whole strike was being conducted! In Edinburgh, the local ballpark was filled with impounded vehicles, held there by strike pickets until individual permits and trade union drivers were obtained. The police chiefs of most cities made emphatic announcement that such granting and withholding of permits by strike committees was wholly illegal. This merely added to the existent "liveliness" of the situation.

The common attitude of the strike committees toward their own function during the strike can best be seen in a naïve comment of a strike-leader in one of Arnold Bennett's *Five Towns*. Referring to the employers who were coming to the strike committee "cap in hand" to ask for permits to move their goods, he said: "Most of them turned empty away after a most humiliating experience, for one and all were put through a stern questioning, just to make them realize that we and not they were the salt of the earth."<sup>12</sup>

The British government and the press promptly raised the issue of "civil war," and the government organ, the *British Gazette*, spoke glibly of the strikers as "the enemy." Yet no impartial student of the British national strike can question that the vast majority of the strike leaders had not the slightest desire to overthrow the existing form of government, A. J. Cook, the radical leader of the miners, notwithstanding. At the same time, no student can doubt that the orders of the strike leaders, as interpreted and practised by the local strike committees and the ranks of the strikers, did logically constitute an attempt to set up a rival authority to that of the legitimate local and national governing bodies. If that contention be granted in the case of so peaceable an economic general strike, it would seem that the revolutionary logic of all three types of the general strike has been proved.

An apparent exception to this rule remains—the strike in Germany called by President Ebert and his cabinet in 1920 to prevent the reaction-

<sup>12</sup> *Sheetmetal Workers' Quarterly*, Oct., 1926, quoted in Postgate, *A Workers' History of the Great Strike*, p. 34.

ary Kapp *Putsch* from overthrowing the Republic. Yet, when carefully considered, this apparent exception proves the writer's thesis even more emphatically. When Kapp with his "Baltic Brigades" swept into Berlin, the Ebert cabinet quietly slipped away to distant cities, admitting by that act their temporary loss of supreme power, at least in the nation's capital. Having failed in its own right, fearing to trust further any of its military or police forces, the Ebert government possessed but one Caesar to whom it might appeal for aid, the ranks of the German workers. By its call for a general strike, the Ebert cabinet abdicated, at least for the time. The behavior of the strikers after the ignominious retreat of Kapp and his brigades is evidence of this. To the Ebert cabinet's appeal for an immediate return to work throughout the nation, now that Kapp had departed, the strikers in Berlin and the Rhineland, who had borne the brunt of the struggle against the *Putsch*, refused to return until the Ebert government had given pledges of power and determination to punish Kapp and his fellow rebels.

The government gave those pledges and the strike ended; but the pledges were not kept. War minister Noske, with troops that had been in sympathy with the Kapp ring-leaders, proceeded to punish, not the Kappist rebels, but the unhappy strikers who had risen and armed themselves throughout the land. The correspondent of the *London Times*, who could not be accused of bias in favor of the strikers, declared that the punishment of the Kapp *Putsch* participants rapidly became a farce. Yet no further general strike was called by the trade union leaders, for the Ebert cabinet now once again possessed the power of the military and was again securely in the saddle.

It seems, therefore, that in these days a successful general strike in Western civilization is likely to occur only where the labor forces have faced the full revolutionary logic of that weapon, and where the ruling class or the government has at the same time remained so blind to progress and so unjust to the masses of the people that anything, even revolution, is preferable. Even at that, success in the use of the weapon demands that the cause be so clear that most of the citizens outside the ranks of labor, and the majority of the military and naval forces, express strong sympathy with the strikers. This was evidently the situation in the recent Spanish and Cuban general strikes, where the revolutionary aim of the method was successfully achieved.

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## FOREIGN GOVERNMENTS AND POLITICS

**Austria's Corporative Constitution.** As a feature of a reformed May Day celebration, the cabinet of Chancellor Engelbert Dollfuss, on May 1 last, decreed a new constitution for Austria. The rather lengthy document, consisting of 182 articles and covering some 32 pages in the official *Bundesgesetzblatt*, is mainly the work of Dr. Otto Ender, former chancellor, who, on July 18, 1933, joined the Dollfuss cabinet as minister for constitutional and administrative reform. It had been approved on April 30 at the final session of the lower house of the republican parliament, the *Nationalrat*. Owing to the cabinet's cancellation of the mandates of 72 Social Democratic deputies and of two other deputies who had manifested National Socialist sympathies, only 91 of those who had been elected to the *Nationalrat* in 1930 were eligible to attend the session. The republican constitution had demanded a majority of all the elected members of the parliament for a constitutional change, but the cabinet had previously ruled that ratification could be completed by 46 affirmative votes or a majority of those deputies whose mandates had not been cancelled. Seventy-six of the eligible deputies did attend the session, and 74 of them cast their ballots for the new instrument of government. The opposition came from two Pan-German deputies, Dr. Haempl and Dr. Foppa, whose speeches of protest were suppressed.<sup>1</sup> Along with the new constitution, some 470 decrees, issued by the Dollfuss cabinet since its coup of March 8, 1933, were also ratified. The action of the rump republican parliament thus served not merely to open the way to a new régime of constitutional government in Austria, but also to clothe the purely arbitrary activity of the previous fourteen months of dictatorship with the dignity of formal legality.

According to the opening provisions of the new constitution, Austria ceases to be a republic and abandons democracy and parliamentarism.<sup>2</sup> Instead of a popularly elected sovereign parliament, there is to be a series of six deliberative tribunals which together will have only a limited influence on lawmaking and no influence whatever over the conduct of

<sup>1</sup> For details of the session, see *New York Times*, May 1, 1934, and *Central European Observer* (Prague), Vol. 12, p. 154 (May 4, 1934).

<sup>2</sup> All direct citations to the new constitution in this note are to the provisions as they appear in the official *Bundesgesetzblatt für die Republik Österreich*, No. 70 (April 30, 1934), pp. 437-468. With the adoption of the new constitution, the name of this official publication has been changed to *Bundesgesetzblatt für den Bundesstaat Österreich*, and the text of the constitution is reprinted, May 1, 1934, as the first number of the publication under the new rubric. Some of the more important provisions of the new constitution appear in the *New York Times* for May 1, 1934, and summaries of the principal provisions are to be found in the *London Times* for the same date and in *Current History* for June, 1934, pp. 355-357.

administration. In their composition particularly, these tribunals are to give expression to the so-called corporative principle, allegedly the basic principle of the new constitutional order. Interests and classes, most of which will ultimately possess the status of legal corporations or public bodies, and not a miscellaneous electorate artificially divided into political parties, are to constitute the social substructure from which these six tribunals will be recruited.

Four of these tribunals will perform merely advisory functions in respect to legislation, and will be known as advisory councils (*vorberatende Organe*). The first of them, the Council of State, or *Staatsrat*, will consist of from 40 to 50 members appointed by the cabinet from among persons qualified by knowledge and experience, probably chiefly bureaucrats and politicians loyal to the government of the day. They will be appointed for a term of ten years and may be reappointed.<sup>3</sup> The second and third tribunals will be known, respectively, as the Federal Council of Culture, or *Bundeskulturrat*, and the Federal Economic Council, or *Bundeswirtschaftsrat*. The Council of Culture will be composed of from 30 to 40 representatives of recognized churches, religious corporations, educational and cultural associations, and scientific and artistic bodies;<sup>4</sup> while the Economic Council will consist of from 70 to 80 members derived from several groups of corporations devoted to economic and professional pursuits. The chief groups of these corporations will be classified as follows: (a) agriculture and forestry; (b) industry and mining; (c) banking and insurance; (d) trade and transport; (e) the liberal professions; and (f) the public services. Representation on the Economic Council is to be distributed among the various corporations in proportion to their relative importance, but no group of corporations is to have less than three members.<sup>5</sup> Members of both the Council of Culture and the Economic Council are to serve for six years unless their tenure is interrupted by a presidential order dissolving the councils. Temporarily, at least, they will be appointed by the cabinet, although it is anticipated that they will ultimately be selected by the primary organizations which they are to represent. The constitution insists that they shall be irreproachably patriotic.<sup>6</sup>

The last of this group of four deliberative tribunals will be called the Council of the *Länder*, or *Länderrat*. It will have a membership of 18, consisting of the governor of each of the eight Austrian *Länder*, the financial councillor of their respective administrations, the burgomaster of Vienna, and the financial councillor of his administration.<sup>7</sup>

Each of these four councils will perform its advisory function exclusively at the command of the cabinet. Projects of law, which can be initiated only by the cabinet, will be sent to one of them in the first instance for a

<sup>3</sup> Art. 46.

<sup>4</sup> Art. 47.

<sup>5</sup> Art. 48.

<sup>6</sup> Arts. 47, 48.

<sup>7</sup> Art. 49.

report and recommendations. Projects of a general nature will go to the Council of State; projects which affect cultural or economic interests will go to the Council of Culture or to the Economic Council, respectively; and projects relating to regional or local interests will be sent to the Council of the *Länder*.<sup>8</sup> The councils are expected to deliberate in secret and to report back to the cabinet within a definite period of time.<sup>9</sup>

To be distinguished from these four advisory councils is the fifth tribunal which will be known technically as a "resolving body" (*beschliessendes Organ*). This is the Federal Diet, or *Bundestag*. It will consist of 59 members—20 from the Council of State, 10 from the Council of Culture, 20 from the Economic Council, and 9 from the Council of the *Länder*. Each of the first three of the councils will choose its delegation from among its entire membership; the Council of the *Länder* will automatically send the governors of the eight *Länder* and the burgomaster of Vienna.<sup>10</sup> Inasmuch as all the members of the advisory councils will, temporarily at least, be appointees of the cabinet, the Diet will also have to be regarded as an indirect creation of the cabinet.

It is the Federal Diet that will bear the greatest resemblance to a parliament, since it will have power to approve or reject all the cabinet's projects of law after these have been considered by the appropriate advisory council.<sup>11</sup> Nevertheless, the procedure which it will observe in its deliberations will be quite unlike that of any Western parliament. The only permissible discussion will consist of a formal examination by two *rapporteurs*, one favoring, and the other opposing, a project. Amendments will not be permitted, and the decision of the Diet must be rendered within a period of time fixed by the chancellor.<sup>12</sup> In case the Diet rejects the project, it may be submitted to a popular referendum which, if favorable, will permit the cabinet to proclaim the project a law even if the Diet reiterates its opposition.<sup>13</sup>

The annual budget, other fiscal measures, and other miscellaneous matters are not to be submitted to an advisory council, but are to be sent directly to the Diet. On these measures, freedom of debate is to be permitted as well as unlimited right of amending.<sup>14</sup> In the case of the budget, however, which must be introduced by the cabinet at least ten weeks before the expiration of a fiscal year, the Diet must take either favorable or unfavorable action within six weeks. Should it fail to do so, the cabinet's project becomes law automatically.<sup>15</sup>

The sixth and last deliberative tribunal provided for is the Federal Assembly, or *Bundesversammlung*. This is to be a body composed of from

<sup>8</sup> Arts. 44, 61.

<sup>9</sup> Arts. 59, 61.

<sup>10</sup> Art. 50.

<sup>11</sup> Art. 61.

<sup>12</sup> Art. 62.

<sup>13</sup> Art. 65.

<sup>14</sup> Art. 63.

<sup>15</sup> Art. 69.

158 to 188 members, i.e., of the combined membership of all four advisory councils. The Federal Assembly will meet on call of the president to perform extraordinary functions such as nominating candidates for the presidency, attesting the oath of a president-elect, and deliberating upon proposed declarations of war.<sup>16</sup>

The chief executive organs are to consist of a president, a chancellor, and a cabinet of ministers. The extraordinary control which these officials are to exercise over legislators and legislative procedure makes it perfectly clear that they are to constitute the center of political gravity. The president will be elected for a seven-year term by all the burgomasters of Austrian municipalities from among three candidates proposed by the Federal Assembly.<sup>17</sup> On his own responsibility, the president will appoint and remove the chancellor and dismiss existing cabinets. Individual ministers will be appointed by him upon the recommendation of the chancellor.<sup>18</sup> Most of the remaining executive prerogatives, though nominally vested in the president, will be exercised subject to the will and discretion of the chancellor and his colleagues, who must countersign all presidential orders and decrees and assume responsibility for them.<sup>19</sup> Their responsibility, however, will not be of a political or parliamentary nature, but strictly legal. Except for a vague control by the courts, future Austrian executives will exercise their constitutional discretion as independently as any dictator.

The most convincing evidence of the ascendancy of the executive is to be discerned in an extraordinarily comprehensive decree power. Should the Diet prove incapable of acting expeditiously to protect the peace or to conserve the fiscal or proprietary interests of the state, the cabinet may issue a decree authorizing whatever action it considers necessary. Such a decree will have the force of an emergency law (*Notrecht*). It may not change the constitution; nor may it seek to give effect to a project of law previously rejected by the Diet unless the Economic Council and the Council of Culture have first been dissolved. Should the power, for these reasons, not be comprehensive enough, the cabinet may call upon a superior authority, nominally vested in the president, and issue what is called a presidential emergency law (*Notrecht des Bundespräsidenten*). A presidential emergency law may amend the constitution, although it may not set the constitution aside completely. The Diet may secure cancellation of both an emergency law of the cabinet and a presidential emergency law by a vote of two-thirds of its regular quorum, and emergency laws of both types lapse after three years unless renewed.<sup>20</sup>

Emergency powers nominally vested in the president will also enable the cabinet to reconstitute the legislative organs of the federal and local

<sup>16</sup> Art. 52.

<sup>17</sup> Art. 73.

<sup>18</sup> Art. 82.

<sup>19</sup> Art. 79.

<sup>20</sup> Art. 148.

governments in time of war or when public security is threatened and, under similar circumstances, extend, by as much as one-half, the terms of the members of these bodies. Finally, the cabinet is authorized to give legal effect to any project of law which has neither been accepted nor rejected by the Diet within the time specified by the chancellor.<sup>21</sup>

Though established under corporative auspices, the new constitution also proposes to retain a measure of the federalism of the republican period. With the exception of Vienna, which becomes a federal city, the identity of all the former *Länder* is preserved and they are granted what purport to be generous powers over local legislation, finance, and administration. The constitution devotes two entire chapters to the distinction between their powers and the authority of the central government,<sup>22</sup> and a constitutional court, similar to the one which existed under the Republic, is established with power to decide disputes over jurisdiction.<sup>23</sup> Real local autonomy, however, is not likely to flourish, despite these provisions, because of the supervisory powers reserved to the central authorities. These include power to dissolve the diets of the *Länder* and the municipal council of Vienna;<sup>24</sup> to disallow laws which they enact,<sup>25</sup> and to remove the governors of the *Länder* as well as the burgomaster of Vienna.<sup>26</sup> It may be added that the president will also appoint the governors and the burgomaster, although the appointments will have to be approved by the respective local legislatures.

A word ought to be added about the position of the church, particularly of the Roman Catholic Church, in the new Austria. Unlike the situation in Italy and Germany, where the introduction of authoritarian government was accomplished over the protest of the parties politically identified with Catholicism, the introduction of such a form of government in Austria has been mainly the handiwork of the leaders of just such a party. It was inevitable, therefore, that their efforts should have been strongly influenced by clericalism. The evidence of this influence appears in the very preamble of the new constitution, which declares that Austria is a Christian state and piously affirms that all laws emanate from God. In a subsequent article, the Concordat concluded with the Roman Church on June 5, 1933, is given the status of constitutional law.<sup>27</sup> Though recognizing freedom of conscience, other articles grant the family and educational institutions considerable control of religious instruction<sup>28</sup> and affirm it to be the duty of the state to guarantee religious and moral instruction for youth.<sup>29</sup> Churches, moreover, as well as religious corporations, are to be generously represented in the Council of Culture. If any one feature distinguishes the new Austrian régime from other "strong" governments

<sup>21</sup> Art. 148.

<sup>22</sup> Chaps. III and VI.

<sup>23</sup> Art. 170.

<sup>24</sup> Arts. 113, 140.

<sup>25</sup> Art. 111.

<sup>26</sup> Arts. 114, 138.

<sup>27</sup> Art. 30.

<sup>28</sup> Art. 27.

<sup>29</sup> Art. 31.

now in existence, it is this preëminence of ecclesiastical interests. For the intense nationalism of neighboring Fascist states, Austria has substituted clericalism, and the resulting type of government, for want of a better designation, might appropriately be called Clerical Fascism or Christian Patriotism.

For several reasons, the candid observer is not likely to be too optimistic about the successful application of the new constitution. Considerable portions of the instrument appear to have found their inspiration in sources which have little if anything in common with the practical political needs of contemporary Austria. The corporative idea, for instance, is borrowed directly from Italy. According to recent evidence,<sup>30</sup> after ten years of experimentation, it has not been completely applied there. Even if Austria could afford so lengthy an interval for its institution—a doubtful prospect at present—there is little if any assurance that it would comport with the traditional forces and inherent genius of Austrian political life. Already it is apparent that the minimum of autonomy which the developed corporative system is to offer various cultural and economic groups would be utterly repugnant to the authoritarian executive theory of the new constitution.

Similar observations may be made concerning the new constitution's federal features, despite the fact that federalism, unlike corporativism, has actually been a part of Austria's political experience.<sup>31</sup> The federalism of the republican constitution was a kind of *modus vivendi* between the Social Democratic party of Vienna and the clerical hinterland. With the destruction of the Social Democratic party, the reduction of Vienna to the status of a federal city, and the complete ascendancy of the clericals through the Dollfuss dictatorship, the only genuine reason for a federal system, even for one as emasculated as that now provided, has disappeared. At best, the numerous articles of the new constitution devoted to this subject may serve as a gesture to conciliate the particularists among Chancellor Dollfuss' own Christian Social partisans in the Alpine *Länder*, Vorarlberg and the Tyrol.

Still more weighty reasons for doubting the successful application of the new constitution are to be discovered in the parlous condition of contemporary Austria's internal and international political situation.

<sup>30</sup> See description of the most recent plans for transforming Italy into a corporative state in *New York Times*, May 10, 1934.

<sup>31</sup> Some corporative ideas were included in the constitutional revision of 1929, but nothing was ever done to put them into effect. See para. 16 of constitutional law of December 7, 1929, amending constitution of October 1, 1920, *Bundesgesetzblatt für die Republik Österreich*, No. 93 (Dec. 10, 1929), p. 1326. See also para. 15 of transitional constitutional law of December 7, 1929, *ibid.*, no. 93 (Dec. 10, 1929), p. 1336. A consideration of these ideas occurs in M. W. Graham, "Constitutional Crisis in Austria," in this REVIEW, Vol. 24, p. 154 (Feb., 1930).

The bitterness created by the ruthless military suppression of the Social Democrats has not abated; nor will the leaders of National Socialism soon cease their agitation to annex Austria to Germany or, failing that, to "coördinate her with their movement in the fashion in which they have "coöordinated" Danzig. At the same time, the greatest uncertainty prevails as to the part which the rivalry of the Powers, particularly Germany, Italy and France, will force Austria to play in the international arena. Under such conditions, the state is hardly in a position to enter upon a régime of constitutional government, even upon a régime as authoritarian in character as the one designed by the new constitution.

It would appear that those chiefly responsible for the new constitution themselves entertain some doubts of their ability to apply it at once. Though ratified and promulgated as fundamental law, the last article stipulates that the transition to the political order which it contemplates shall be regulated by a special constitutional law still to be enacted. A government spokesman has let it be known that his colleagues anticipate a period of transition of at least two years.<sup>32</sup> In the meantime, by virtue of a blanket enabling act, also enacted by the rump republican parliament on April 30, the cabinet of Chancellor Dollfuss has been authorized to govern with what amounts to plenary legislative and executive powers in much the same fashion that it has governed since the *coup* of March 8, 1933.<sup>33</sup>

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Judicial Review of Legislation under the Austrian Constitution of 1920.\* When Canada set up a federal system of government in 1867, she had nearly eighty years of American experience to build upon. Consequently, she was able to evade many of the problems in which we find ourselves entangled today. When Austria provided for judicial review in her constitution of 1920, she could profit from more than a century and a quarter of American experience, as well as from the various modifications of the American plan to be found in the British Dominions and elsewhere. Hence, we should not be surprised to learn that in the opinion of Dr.

<sup>32</sup> See *New York Times*, May 1, 1934.

<sup>33</sup> For terms of the enabling act, see Art. 3 of the constitutional law of April 30, 1934, concerning "emergency measures within the scope of the constitution," *Bundesgesetzblatt für die Republik Österreich*, No. 72 (April 30, 1934), p. 477. The foregoing article was in type at the time when the political situation was made still more hazardous by the assassination of Chancellor Dollfuss.

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Hans Kelsen the theory and practice of judicial control of legislation reached a more complete development in Austria than in any other nation.<sup>1</sup> The fact that this institution, being completely at odds with the Fascist conception of unified control, has been abolished by the new constitution,<sup>2</sup> need not detract from its interest to students of political science. Even if the writer is mistaken in his belief that the time has come when the American system is in need of complete overhauling—in which case Austrian experiences might well serve as a starting point for the reexamination of basic concepts—a study of the Austrian system is a decided aid to a more thorough understanding of our own. Although the central theory may have been borrowed from the United States, the differences in technique were exceeded only by the differences in the concept of unconstitutionality and the effect of a judicial decision upon the juridical status of a statute.

Granted that provision is to be made for a judicial review of questions of constitutionality, this power may be vested in the regular courts, or a special tribunal may be created to exercise it. Austria chose the latter alternative, the constitution specifically providing that the ordinary courts "shall not have power to examine into the validity of laws duly proclaimed."<sup>3</sup> Instead, a special tribunal, the Supreme Constitutional Court (*Verfassungsgerichtshof*), was created<sup>4</sup> to exercise this important function. This court consisted of fourteen regular members and six alternates,<sup>5</sup> chosen to serve until they should reach the age of seventy years.<sup>6</sup> As in the case of the French administrative court (*Conseil d'État*), it was felt advisable to draw into the tribunal experts from various walks of life, including those with legislative or administrative experience. Although all appointments were made by the federal president, he was limited in his selections to lists of nominees submitted by the national ministry and the national legislature.<sup>7</sup> Aside from its power to pass upon

<sup>1</sup> Kelsen, "Rapport sur la garantie juridictionnelle de la constitution," *Annuaire de l'Institut International de Droit Public* (1929), 52, 53.

<sup>2</sup> Ratified by a rump parliament on April 30, 1934. Unless otherwise noted, all references in the present article are to the constitution of 1920.

<sup>3</sup> Art. 89 (1). See also Art. 140 (4).

<sup>4</sup> Arts. 137–148; and law of April 4, 1930, *Bundesgesetzblatt*, No. 112. The latter is hereafter referred to as *Stat. 1930*.

<sup>5</sup> *Const.*, Art. 147 (1), as amended July 30, 1925; *Stat. 1930*, Art. 1. Nine members constituted a quorum. *Stat. 1930*, Art. 7. A member might be ineligible to sit in a given case because of an indirect interest in the litigation. *Id.*, Art. 12.

<sup>6</sup> *Const.*, Art. 147 (6), as amended December 7, 1929.

<sup>7</sup> *Const.*, Art. 147, as amended December, 1929. The president, vice-president, six of the associate members, and three of the alternates were chosen from the list prepared by the federal ministry. They must have had experience as judges, administrative officials, or professors of law or political science. Three associate members and two alternates were chosen from a list prepared by the lower house of the

the constitutionality of state<sup>8</sup> and national laws and the legality of administrative ordinances,<sup>9</sup> the jurisdiction of the court was strictly limited. It tried impeachments<sup>10</sup> and contested election cases,<sup>11</sup> and passed upon all claims against the federal state, the states, or the municipalities which could not be brought before the regular courts.<sup>12</sup> It could also entertain complaints "of a violation of constitutionally guaranteed rights by reason of a decision or a decree of an administrative authority, after administrative appeals have been exhausted,"<sup>13</sup> and as a "court of conflicts" it determined the respective jurisdictions of the administrative authorities, the ordinary courts, the administrative court, and the Supreme Constitutional Court itself.<sup>14</sup> It had no general civil or criminal jurisdiction whatsoever, the Supreme Judicial Court (*Oberstergerichtshof*) being the court of last resort in such cases.<sup>15</sup> Hence, it was free to devote the greater part of its time to constitutional issues.

*Procedure.* An action to test the validity of a statute might be begun in any one of four ways. The constitution provided that "the Supreme Constitutional Court shall render judgment, on application of the federal ministry, upon the unconstitutionality of state laws; on application of a state government, upon the unconstitutionality of federal laws."<sup>16</sup> As most questions of legal competence had to do with the division of powers between the federal and state governments, there being nothing in the Austrian bill of rights corresponding in scope to our own due process and

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legislature (*Nationalrat*), and the remaining three associates and one alternate from nominees of the upper house (*Bundesrat*). Neither house was restricted in its choice except by the general requirement that no person should be eligible for appointment to the court who had not completed the university course in law and political science and practiced an allied profession for at least ten years. Administrative officials were required to resign their offices before taking their seats on the court. Members of either house of parliament, or of a state or local legislature, were ineligible for appointment until the term for which they were elected had expired. See Kelsen, *op. cit. supra* note 1, p. 198.

<sup>8</sup> In keeping with American terminology, I have translated *land* as state.

<sup>9</sup> As in the United States, an administrative ordinance, to be valid, was required to comply with the statutes as well as with the constitution.

<sup>10</sup> *Const.*, Arts. 142, 143; *Stat.* 1930, Arts. 72-81. The charges were preferred by the proper legislative body.

<sup>11</sup> "The Supreme Constitutional Court shall render judgment concerning contested elections to the *Nationalrat*, to the *Bundesrat*, to the *Landtage*, or to any other general representative body; and on application of one of these representative bodies, it shall render judgment in respect to the declaration that one of its members has lost his seat." *Const.*, Art. 141. And see *Stat.* 1930, Arts. 67-71.

<sup>12</sup> *Const.*, Art. 137; *Stat.* 1930, Arts. 37-41.

<sup>13</sup> *Const.*, Art. 144 (1); *Stat.* 1930, Arts. 82-88.

<sup>14</sup> *Const.*, Art. 138 (1); *Stat.* 1930, ss. 42-52.

<sup>15</sup> *Const.*, Art. 92.

<sup>16</sup> Art. 140 (1). "The ministry that makes the application must communicate it immediately to the competent state government or the federal ministry, as the case may be." *Id.*, Art. 140 (2).

contract clauses, this was the standard method of instituting such an action. It could be brought to contest the validity either of a statute already enacted, or of a "project of law destined to be submitted to the decision of a legislative body."<sup>17</sup> If a law was directly involved in a case before the court, and the members entertained doubts as to its validity, the court could, on its own motion, direct that the constitutional issue be raised and decided.<sup>18</sup> Prior to 1929, these were the only methods whereby such questions could be raised; but in that year it was provided that "the Supreme Constitutional Court shall render judgment upon the unconstitutionality of federal or state laws at the request of the Supreme Judicial Court (*Oberstergerichtshof*) or of the Supreme Administrative Court (*Verwaltungsgerichtshof*), when the law which is referred to it serves as the basis of a judgment to be rendered by the court making the request."<sup>19</sup> Such a request could be made only at a session of the full court.<sup>20</sup> It will be noted that in no case could an action to test the validity of a law be brought in the Supreme Constitutional Court by a private citizen,<sup>21</sup> although a petition by the Supreme Judicial Court or by the Supreme Administrative Court normally arose out of the arguments of a citizen or of his counsel before such court.

In his report to the 1928 session of the Institut International de Droit Public, Dr. Kelsen suggested that it might prove desirable to permit such actions to be brought by a defeated minority of the legislative body passing the law.<sup>22</sup> This might well have proved an expeditious manner of bringing the constitutional guarantees of minority rights into play.<sup>23</sup> He also suggested the possibility of creating a new official whose sole function should be to examine all state and national laws, and to submit those of doubtful constitutionality to the consideration of the Supreme Constitutional Court.<sup>24</sup> Neither suggestion was adopted.

<sup>17</sup> *Stat.* 1930, Art. 54, passed in pursuance of *Const.*, Art. 138 (2), added by the amendment of July 30, 1925. It was only where the dispute related to the division of powers between the federal and state governments, or between two or more states, that the validity of a bill might be raised prior to its passage.

<sup>18</sup> *Const.*, Art. 140 (1); *Stat.* 1930, s. 65.

<sup>19</sup> *Id.*, as amended December 7, 1929. This amendment appears to have been modeled after the practice in Czechoslovakia. See M. Z. Peska, "Le development de la constitution Tschechoslovaque" (1930), 47 *Revue du Droit Public*, 224.

<sup>20</sup> *Stat.* 1930, Art. 62 (1).

<sup>21</sup> It is the opinion of Austrian jurists that to allow this to be done would "entail a too serious danger of rash actions, and the risk of an unsupportable obstruction of the rolls." They concede, however, that "it is incontestably in this manner that the political interest that exists in the elimination of irregular acts would receive the most radical satisfaction." Kelsen, *op. cit. supra* note 1, p. 126.

<sup>22</sup> *Op. cit. supra* note 1, pp. 128-129.

<sup>23</sup> See *Const.*, Arts. 6 (3), 7, 26 (5), 84, 85, 90 (2), 149 (1).

<sup>24</sup> *Op. cit. supra* note 1, p. 128.

Regardless of the manner in which the action was commenced, the request was required to state whether it sought to annul the entire law or only certain parts thereof, and to specify, in detail, the objections to the law.<sup>25</sup> The president of the court immediately set a date for a public hearing,<sup>26</sup> to which the interested governments were invited.<sup>27</sup> If the request was presented by the Supreme Judicial Court or by the Supreme Administrative Court, the parties to the litigation out of which this request arose were also summoned personally.<sup>28</sup> In addition, the court might summon other "interested parties" to appear at the hearing,<sup>29</sup> either personally or through attorneys.<sup>30</sup> Essentially, however, "the defense of federal laws which [were] attacked [belonged] to the federal government; that of state laws, to the proper state government."<sup>31</sup> To prevent undue delay, it was provided further that the hearing must be held and the decision of the court rendered "as soon as possible during the month following the request."<sup>32</sup>

It is, to be sure, "extremely regrettable to have to annul a law, and even more so a treaty, for unconstitutionality after it has been in force, without being questioned, for many years."<sup>33</sup> Hence, it has been suggested that the period during which the constitutionality of a legislative enactment may be attacked should be limited to five, or possibly even three, years from the date on which it went into force.<sup>34</sup> But Austria did not see fit to adopt any such limitation, the constitution providing that such an action might be brought "at any time."<sup>35</sup>

*Effect of Unconstitutionality.* The Austrian court had a true judicial veto. In the belief that "it is necessary, if one desires that the constitution be efficaciously guaranteed, that the act submitted to the control of the Supreme Constitutional Court should be directly annulled by its decision,"<sup>36</sup> provision was made that when an act was held unconsti-

<sup>25</sup> Stat. 1930, Arts. 15, 62 (1).

<sup>26</sup> Stat. 1930, Arts. 19 (1), 63 (1).

<sup>27</sup> *Id.*, Art. 63 (1). If the case involved a dispute as to the division of powers between the nation and the states, the federal government and all state governments were summoned to the hearing with the indication that it was permissible for them to participate therein. *Id.*, Art. 56 (2).

<sup>28</sup> *Id.*, Art. 63 (1).

<sup>29</sup> *Id.*, Art. 19 (1).

<sup>30</sup> *Id.*, Art. 24 (2).

<sup>31</sup> *Id.*, Art. 63 (1). At the time of the summons, the non-plaintiff governments were invited to present to the court, not less than one week prior to the date set for the hearing, a written brief on the questions to be decided. *Id.*, Arts. 56 (3), 63 (2). The statement filed at the time the action was brought (see *supra* note 25) may be considered as constituting the plaintiff's brief. Greatest reliance was placed, however, upon oral argument.

<sup>32</sup> *Id.*, Art. 63 (3).

<sup>33</sup> Kelsen, *op. cit. supra* note 1, p. 121.

<sup>34</sup> *Id.* Such a restriction is in force in Czechoslovakia. Peska, *op. cit. supra* note 19, p. 236.

<sup>35</sup> Art. 140 (2).

<sup>36</sup> Kelsen, *op. cit. supra* note 1, p. 120. And see B. Mirkine-Guetzévitch, "Les nouvelles tendances du droit constitutionnel (1928), 45 *Revue du Droit Public*, 5, 38.

tutional the judgment of the court should be certified (depending upon whether a national or a state law was involved) to the federal chancellor or to the governor of the state, who immediately published a decree annulling the statute.<sup>37</sup> This decree was required to state whether the act was annulled as a whole or in part, and to specify the particular decision of the court upon which it was based.<sup>38</sup>

Normally, the judgment of annulment became effective on the day of publication of this decree,<sup>39</sup> and entailed the return to force of the legislative provisions which had been abrogated by the law now set aside as unconstitutional.<sup>40</sup> The court had power, however, to provide that the annulment should not become effective until the expiration of a given time following publication.<sup>41</sup> This enabled it, at its discretion, to give the legislature an opportunity to replace the impeached law with a new and valid one before the annulment became effective. Originally, this period of grace was limited to six months, but it was subsequently extended to a maximum of one year.<sup>42</sup>

When a question as to the validity of a given statute had been certified to the Supreme Constitutional Court by the Supreme Court or the Supreme Administrative Court, and the law had been held unconstitutional, the tribunal making the request did not apply this act to the concrete case which gave rise to the request, but decided it, instead, as if the statute had never been passed. With this single exception, which was justified purely on grounds of expediency,<sup>43</sup> the judgments of the court were never retroactive in effect, and hence had no bearing whatsoever upon any of the juridical acts previously taken upon the basis of the statute in question.<sup>44</sup> Nor could the question be reopened without the reenactment of the annulled law by the legislature, since the effect of the decision was defi-

<sup>37</sup> *Const.*, Art. 140 (3). The provision was clearly mandatory.

<sup>38</sup> *Stat.* 1930, Art. 64 (2).

<sup>39</sup> *Const.*, Art. 140 (3).

<sup>40</sup> *Const.*, Art. 140 (4), as amended December 7, 1929.

<sup>41</sup> *Const.*, Art. 140 (3).

<sup>42</sup> *Id.*, as amended July 30, 1925.

<sup>43</sup> "This retroactive effect of the annulment is a technical necessity because without it, the authorities charged with the application of the law [i.e., the judges of the Supreme Court and of the Supreme Administrative Court, respectively] would not have an immediate and consequently sufficiently cogent interest to cause the intervention of the constitutional court. . . . It is necessary to encourage them to present these requests by attributing in case of annulment a retroactive effect." Kelsen, *op. cit. supra* note 1, p. 127.

<sup>44</sup> For example, if a statute went into force in March, and the judgment of annulment did not become effective until July, the annulled act was still applied to a set of facts arising in May. In short, the citizen had no alternative to abiding by the law while it remained on the statute book save to run the chance that it would be his case that would be made the basis of a petition to the Supreme Constitutional Court by the Supreme Court or the Supreme Administrative Court.

nately to remove the law from the statute book. In brief, for all practical purposes the effect of such a judgment was the same as if the statute had been repealed by a later legislative act.<sup>45</sup>

*Summary.* Thus we see that under the Austrian system constitutional questions were not raised in the trial court and subsequently appealed to the court of last resort, as with us, but were, instead, taken directly to the latter tribunal, which was the sole court authorized to pass upon them. Speaking generally, only a national or state ministry could institute such an action as of right, although either the Supreme Judicial Court or the Supreme Administrative Court, and on occasions the Supreme Constitutional Court itself, could authorize the bringing of such an action. The sole question presented for consideration was the validity of the statute, which was considered entirely apart from any specific demand for relief. If the Supreme Constitutional Court held the statute unconstitutional, the latter was annulled *pro futuro* and was removed from the statute books, either at once or at a named date not more than one year thence. The time required for the entire process, from the filing of the action to the rendering of the judgment, could not exceed thirty days. As the case might be brought even prior to the introduction of a bill, it was thus possible for the question to be decided and the proposed statute held unconstitutional before its final passage, and hence before its promulgation as law. Similarly, under such an expeditious procedure a statute could be judicially annulled after passage but before it had gone into effect.<sup>46</sup> And since the judgment of annulment was not retroactive,<sup>47</sup> and, further, served definitely to repeal the act, no question could possibly arise as to the law applicable to a given set of facts, regardless of whether they arose prior to or subsequent to the decision of the Supreme Constitutional Court.

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<sup>45</sup> The adoption of such a practice may have been due, in part, to the fact that Continental jurists as a group consider the judicial review of legislation essentially legislative in character.

<sup>46</sup> It should be noted that a state law could not go into effect until eight weeks following the date of its passage, unless the federal ministry expressly consented to earlier publication. *Const.*, Art. 98.

<sup>47</sup> This generalization is subject, of course, to the qualification noted above.

## INTERNATIONAL AFFAIRS

**The Effect of the Non-Recognition of Manchukuo.** When the United States government, on January 7, 1932, and the Extraordinary Assembly of the League of Nations, on March 11, 1932, and again on February 24, 1933, invoked non-recognition as a sanction,<sup>1</sup> the necessity at once arose of determining what would be the precise effects, as far as international relations are concerned, of withholding recognition of Manchukuo. It may seem strange that the decision to resort to non-recognition as a sanction was taken before an attempt was made to determine the practical effects of such action on the Far Eastern situation. Presumably, however, this must be the procedure in the application of international sanctions. The precise manner in which the application of coercive force will be carried out in a given case, and the results which such application of force will have, cannot very well be determined in advance of the action taken.

In order to give genuine authority to non-recognition as a sanction, it is necessary that the effect of withholding recognition be made as oppressive as possible. The non-recognized state must be isolated from the rest of the world, as completely as conditions permit. Such result necessarily involves unanimous, or substantially unanimous, action on the part of all governments. Concerted efforts must be made to avoid any compromise or commitment, by any state, in regard to the state from which recognition is being withheld, and no *de facto* or temporary relations with the new state may be established.

With a view to giving greater clarity and meaning to the non-recognition policy as applied to Manchukuo, the Advisory Committee, provided for by the Assembly in its report of February 24, 1933, has made a special study of the problem and communicated its findings to the members of the League and the non-member states to which the Assembly's report of February 24 regarding the Sino-Japanese dispute had been sent.<sup>2</sup>

<sup>1</sup> In concluding its statement of recommendations regarding the Sino-Japanese dispute, the Assembly stated that the "maintenance and recognition of the existing régime in Manchuria" was excluded, as such action would be "incompatible with the good understanding between the two countries on which peace in the Far East depends." It followed, therefore, that "in adopting the present report, the members of the League intend to abstain, particularly as regards the existing régime in Manchuria, from any act which might prejudice or delay the carrying out of the recommendations of the said report. They will continue not to recognize this régime either *de jure* or *de facto*. They intend to abstain from taking any isolated action with regard to the situation in Manchuria and to continue to concert their action among themselves as well as with the interested states not members of the League." Document A (Extra). 22. 1933. VII. Pt. IV, Sec. III.

<sup>2</sup> The Advisory Committee consists of the representatives of the Committee of

Early in June, 1933, the Committee completed its findings on the consequences which it considered to be involved in the policy of non-recognition of the existing régime in Manchuria, and on the 14th of the month its recommendations were forwarded to the governments of members of the League and of the states to which the Assembly's report of February 24 had been sent. It was assumed by the Committee that, unless informed to the contrary, the governments of those states represented on the Advisory Committee as well as those of League members not so represented would apply the measures recommended.<sup>3</sup>

The problems which the Committee has so far investigated, and on which it makes specific recommendations to the individual governments, are as follows: (1) the question of the participation of the present government of Manchuria in international conventions; (2) the basis of admission of Manchukuo mail matter to the postal services of other countries, and the status in other countries of Manchukuo postage stamps; (3) the question of the international non-recognition of the currency of Manchukuo; (4) problems that may be raised by the acceptance by foreigners of concessions or appointments in Manchuria; (5) the question of passports; (6) the position of consuls; and finally, (7) the application to Manchukuo of the import and export certificates system applicable to trade in opium, under provisions of the Geneva Opium Convention of 1925 and the Limitation Convention of 1931.

The findings and recommendations of the Advisory Committee on these several questions are as follows:

1. It is assumed that, in deciding not to recognize, either *de jure* or *de facto*, the existing régime in Manchuria, the members of the League will take all necessary steps to prevent Manchukuo from acceding to existing international conventions. These conventions fall into two categories—closed conventions and open conventions. In the case of closed conventions, i.e., those under which the parties have to be consulted precedent to the admission of new members, the Committee assumes that non-recognizing states will refuse to agree to the admission of Manchukuo. In the case of open conventions, i.e., those to which states may

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Nineteen (provided for in the Assembly resolution of March 11, 1932), Canada, and the Netherlands. The Committee was empowered to invite the governments of the United States and Russia to coöperate in its work. The United States accepted and Russia rejected the invitation. The general mandate of the Advisory Committee is ". . . to follow the situation [in the Far East], to assist the Assembly in performing its duties under Article 3, paragraph 3 [of the Covenant] and, with the same objects, to aid the members of the League in concerting their action and their attitude among themselves and with the non-member states." *Verbatim Record of the Special Session of the Assembly* [February 24, 1933], *Eighteenth Plenary Meeting*, p. 1.

<sup>3</sup> C.L. 117(a). 1933. VII; C.L. 117. 1933. VII.

accede by unilateral action, the Committee recommends that the states with which the acts of accession to such conventions are deposited should consult all of the contracting parties to the convention in question in case Manchukuo should indicate a desire to accede thereto. The parties would thus be given an opportunity to give a negative opinion as to the acceptance of the accession of Manchukuo, and such decision, it is held, would be in conformity with the Assembly's action of February 24. Moreover, the depositary state would thus be able, in replying to Manchukuo's application, to make use of the opinions of the other contracting states.<sup>4</sup>

<sup>4</sup> The following is a list of the open conventions to which the above procedure applies, and the states with which acts of accession are to be deposited, and which would therefore assume the initiative in consulting the other contracting states in regard to the acceptance or refusal of an act of accession submitted by Manchukuo:

- Belgium:* Convention of December 31, 1913, for the constitution of an International Bureau of Commercial Statistics.
- Convention of March 15, 1886, for the International Exchange of Official Documents and of Scientific and Literary Publications.
- Convention of July 5, 1890, establishing an International Union for the Publication of Customs Tariffs.
- Spain:* International Convention on Telecommunications, Madrid, December 9, 1932, establishing the International Union for Telecommunications.
- France:* Convention on the Regulation of Aërial Navigation, Paris, October 13 1919 (Article 41).
- Convention concerning International Exhibitions, Paris, November 22, 1928.
- Agreement for the constitution of an International Office for Dealing with Contagious Diseases of Animals, Paris, January 25, 1924.
- Convention for the constitution of an International Office of Chemistry, October 29, 1927.
- Metric Convention, signed May 20, 1875, revised 1921, respecting the Constitution of an International Office of Weights and Measures.
- Sanitary Convention, opened for signature at Paris, on June 26, 1926.
- Italy:* International Agreement respecting the constitution of an International Office of Public Health, Rome, December 9, 1907.
- Netherlands:* Conventions signed at the Second Hague Conference (1907).
- International Opium Convention, signed at The Hague on January 23, 1912.
- International Sanitary Convention for Air Navigation, 1933.
- Switzerland:* Convention regarding Industrial Property (establishing the International Office of the Union for the Protection of Industrial Property; first convention concluded 1883, revised 1925.)

The Committee gave especial attention to the case of conventions concluded under the auspices of the League of Nations. The majority of these are open for subsequent accession, subject to decisions taken solely by the Council of the League, and thus no action on the part of the individual signatories is required. In case of open League conventions, "the Secretary-General of the League could not receive any accession from 'Manchukuo.'" The French government has been asked to act as consultant in the case of the Conventions for the Supervision of the Trade in Arms and Ammunition and the Prohibition of the Use of Asphyxiating Gases. The Committee held that no action on the part of the contracting parties was necessary to exclude Manchukuo from the Hague Convention for the Pacific Settlement of International Disputes and the Protocol of Signature of the Permanent Court of International Justice, as these contain accession clauses which have the effect of excluding Manchukuo automatically.

The Committee also examined the statutes of certain international commissions and associations which were not created under international conventions. Inasmuch as these commissions and associations were not set up under international conventions, the Committee held that no claim to *de jure* recognition of a state could be deduced from "the admission to or participation in these commissions or associations of a delegate of any public authority whatever." The Committee also held that neither could *de facto* recognition be claimed as a result of "the admission to or participation in these bodies of a delegate appointed by a public authority, if these bodies also include delegations of administrations or private associations." The Committee indicated, however, the desirability of League members, represented in such organizations, using every means within their power to prevent the participation of representatives of Manchukuo in such organizations.

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Convention for the constitution of an International Union for the Protection of Literary and Artistic Works (first convention concluded September 9, 1886, revised 1928).

Universal Postal Convention (latest revised text, London, June 28, 1929).

Geneva Convention for the amelioration of the condition of the wounded and sick in armies in the field (Red Cross Convention), signed at Geneva on July 27, 1929.

Convention relating to the Treatment of Prisoners of War.

"In regard to the Treaty for the Renunciation of War (Pact of Paris), the government of the United States of America might be looked upon as occupying a position similar to that of the governments of those states members of the League with which conventions have been deposited."

2. The relation of Manchukuo's postal service to those of other states presents a difficult situation. On July 24, 1932, and under the provisions of Article 27 of the Universal Postal Convention,<sup>5</sup> the Chinese government requested the Universal Postal Union to send the following notification to all member states:

1. That all postal service in Manchuria has been temporarily suspended;
2. That all mails destined for Europe and America will henceforth be forwarded respectively via the Suez Canal and the Pacific Ocean. The Chinese government requests that all post-offices of the member states will do the same with their mails destined for China;
3. That all stamps issued by the puppet government will be invalid. All mail matter or parcels bearing these illegal stamps will be charged postage due.

Aside from incorporating in its report this notification of the Chinese government, the Advisory Committee simply reminded members of the League that Manchukuo is not a member of the Universal Postal Union, and that procedure had been outlined under "1" for dealing with the matter, should the question of its accession to the Universal Postal Convention arise.

3. In regard to the currency question, the Committee declared that it deemed it inexpedient to propose that individual governments should prohibit transactions in Manchukuo currency, since "a domestic currency is created by a domestic law" and is used in the same way as any object of value bought and sold in international trade. It calls attention, however, to the desirability of preventing official quotations in Manchukuo currency in those countries which maintain an official foreign exchange market.

4. The Committee held that, although there was nothing in the Assembly's report of February 24 which could be interpreted to prohibit nationals of states members of the League from entering into contractual business relations with anyone in Manchuria or accepting concessions from the authorities thereof, it rested with each member of the League to inform its nationals of the risks attendant upon such relations, and particularly the difficulty in protecting its nationals and their interests in Manchuria. Individuals should also be informed of the "probable attitude of the Chinese authorities with regard to the validity of such con-

<sup>5</sup> This article is as follows: "*Temporary suspension of service.* When, as a result of exceptional circumstances, an Administration finds itself obliged to suspend the execution of services temporarily, in whole or in part, it is bound to give notice thereof immediately, by telegraph if necessary, to the Administration or Administrations concerned." *Universal Postal Union: Convention of London (June 28, 1929)* (Government Printing Office, Washington, 1930).

cessions or appointments obtained in the present circumstances from the authorities established in Manchuria."

5. The Committee was of the opinion that non-recognizing governments could not accept passports issued by the Manchukuo government, and therefore could not allow its agents to visa such documents. The committee held that inhabitants of Manchuria who desire to travel abroad might be given an "identity-document or a *laissez-passer*" by the consul of the country which they wish to visit. The same procedure could be followed by countries of transit, or the countries of transit could visa the "identity-document or *laissez-passer*" issued by the authorities of the country of destination. The consuls, in order to make certain of the identity of the applicant, could utilize the documents issued by Manchukuo authorities whether they are called passports, *laissez-passer*, or what not. These considerations, naturally, "apply with even greater force to diplomatic passports or diplomatic visas on diplomatic or ordinary passports."

6. The Committee was of the opinion that states could make provisions for replacing consuls in Manchuria without implying recognition of Manchukuo, since these agents are for the purpose of protecting the nationals of their own countries and gathering information for their governments. Consuls should be cautioned to refrain from any type of action which "could be interpreted expressly or by implication as a declaration that they regard the authorities established in Manchuria as the proper government of the country." Governments, in making consular appointments to Manchuria, may be guided by their special juridical status as regards China.<sup>6</sup>

7. The Committee recommends to members of the League and to interested non-member states that the provisions of Chapter V of the Geneva Opium Convention (1925) be applied to opium exports to Manchuria. Applications for export of opium, or other dangerous drugs, to Manchukuo territory "should not be granted unless the applicant produces an import certificate in accordance with the Convention of such a nature as to satisfy the government to which the application is made that the goods in question are not to be imported into Manchukuo territory for a purpose which is contrary to the Convention. A copy of the export authorization should accompany the consignment, but governments should refrain from forwarding a second copy of the export authoriza-

<sup>6</sup> United States consuls are still carrying on their functions in Manchuria. American consuls in China do not function under exequaturs; therefore the question of granting recognition through the acceptance of an exequatur does not arise, *i.e.*, if Manchukuo is presumed to succeed to China in this area. The procedure in appointing consuls to China is for the American government merely to notify the Chinese government of the assignment of consular officers to the various posts in China where American consular offices are maintained.

tion to Manchukuo, since such action might be interpreted as a *de facto* recognition of Manchukuo."

In addition to making the above recommendations, the Committee's report calls to the attention of the members of the League "... that in its capacity of an advisory body it remains at the disposal of members of the League for the examination of any question, within the scope of its reference, which they may request it to study with a view to giving them its opinion and proposing concerted action to the governments."<sup>7</sup>

The Committee report thus summarized indicates that the League is proceeding cautiously—doubtless too cautiously to please some—in dealing with this very delicate question. The policy laid down is one of slow but progressive action, with a view to securing coöperation not only among League members but among non-members, on a small series of administrative details. Whether or not the procedure will ultimately prove effective remains to be seen. Apparently it is the only type of action practicable at the present time. There is a possibility that the continued application to Manchukuo of the policy of non-recognition may prove a boomerang and result in greater advantage to Japan than she otherwise would derive from the existing situation in the Far East. If Manchukuo is prevented from adhering to any international conventions made in the past, and is not permitted to sign any international conventions to be made in the future, such as conventions on armaments, opium, etc., Japan may be provided with a plausible excuse for remaining herself unfettered by such agreements. What the ultimate outcome of the situation will be, however, lies in the realm of prophecy.

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<sup>7</sup> The report is contained in C.L. 117. 1933. VII. Annex.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Professor Roger H. Wells, of Bryn Mawr College, is spending the summer in research in Germany.

Under auspices of the American Municipal Association, Professor Morris B. Lambie, of the University of Minnesota, will devote part of the coming academic year to attending economic conferences in various European capitals.

Dr. Irvin Stewart, formerly of the University of Texas and the American University, and more recently connected with the Department of State at Washington, was appointed by President Roosevelt in June as a member of the newly established federal communications commission.

On June 1, Professor Alpheus T. Mason, of Princeton University, gave the principal address before the New Jersey State Bar Association on the subject of "The Supreme Court Yesterday and Today."

At the celebration of the hundredth anniversary of the University of Bern, Switzerland, on June 1-3, the degree of *Doctor rerum politicarum honoris causa* was conferred upon Professor Robert C. Brooks, of Swarthmore College, in recognition of his writings on Swiss subjects.

During the summer quarter, Professor William Anderson, of the University of Minnesota, was visiting professor at the University of Chicago, where he gave courses on municipal government and delivered three special lectures on "The Outlook for Local Government."

Professor Charles M. Kneier, of the University of Illinois, will be on leave of absence during the year 1934-35, and will study law at the University of Michigan. During his absence his courses in municipal government will be taught by Dr. Chesney Hill, who, after serving as an assistant in the department during the past year, has been appointed to an instructorship.

At Indiana University, Professor Frank G. Bates has been succeeded as acting chairman of the department of government by Professor Ford P. Hall.

Under the auspices of the Policy Committee's sub-committee on education, Professor James Hart, of Johns Hopkins University, conducted in Baltimore on May 12-13, a conference of political scientists, public officials, and representatives of economic interests on "New Relations between Government and Business."

In addition to round table leaders at the Virginia Institute of Public Affairs as announced in the last issue of the REVIEW, Professor Francis W. Coker, of Yale University, was in charge of a group concerned with the topic "Dictatorship and Democracy."

Before proceeding to Europe while on sabbatical leave from the University of California at Los Angeles, Professor J. A. C. Grant gave courses in the summer session of the University at Berkeley.

Professor Charles E. Martin, of the University of Washington, exchanged for the summer quarter with Dr. Roy Malcolm, of the University of Southern California.

Miss Florence P. Jensen has resigned her professorship at Rockford College and will be married to Mr. A. W. Sherriff of the *North China Daily News*, Shanghai, China, in September.

Dr. Henry Reining, Jr., formerly of the University of Southern California, has been appointed instructor in political science at Princeton University.

Professors Frank M. Stewart and Charles H. Titus, of the University of California at Los Angeles, have been appointed members of an advisory committee to the Los Angeles city council to study the city charter and suggest amendments for adoption at the fall elections.

Mr. V. O. Key, Jr., graduate student in political science at the University of Chicago, has been appointed lecturer in political science at the University of California at Los Angeles, and will offer courses in American government and state and municipal government.

Mr. Durvard V. Sandifer, instructor in political science at Rutgers University, has been appointed a legal adviser in the Department of State and has been succeeded at Rutgers by Mr. A. J. Ronhovde, recently a graduate student in international relations at Columbia University.

Professor William E. Mosher, of Syracuse University, has been appointed director of the electric rate survey authorized by Congress at its last session.

Mr. Waldo E. Waltz, associate in English at the University of Illinois and graduate student in political science at that institution, has accepted a position as assistant professor of political science at the University of Arizona.

Mr. Clyde F. Snider, instructor in political science at Indiana University, has been made an assistant at the University of Illinois and will do work toward a doctor's degree.

Dr. Pressly S. Sikes, who completed his work for the doctorate in political science at the University of Illinois in June, has accepted an instructorship in political science at Indiana University.

Since receiving his doctor's degree in political science at the University of Illinois in June, Dr. Max Sappenfield has been employed by the Indiana Taxpayer's League to carry on research on the cost and financing of government in Indiana.

On June 2 and 3, a Conference on Problems of Public Personnel Administration was held at the University of Chicago under the auspices of the political science department. All members of the United States Civil Service Commission attended, as did a considerable number of other administrators and teachers in the field of public administration.

Governor Johnson of Colorado has appointed an interim committee to study county government and recommend changes. Among the seven members is Professor Lashley G. Harvey, of the Adams State Teachers College.

Professor Edwin E. Witte, of the University of Wisconsin, has been appointed executive director of the survey which is being made under the auspices of a cabinet committee preliminary to the formulation of a program of social insurance to be presented by President Roosevelt to Congress in January. He will be on leave of absence from the University during the first semester.

The Division of Economics and History of the Carnegie Endowment for International Peace has instituted an extensive survey of the economic, social, and political relations of the United States and Canada. Certain parts of the study have, indeed, been under way for two years, but the more comprehensive plan has been perfected only recently. The investigations relating particularly to political science will be directed by Dean P. E. Corbett of McGill University and Professor R. H. MacKay of Dalhousie University.

Dr. Herman Uhl, who recently completed his work for the doctor's degree at the Johns Hopkins University, has been appointed secretary of the bureau of public administration at the University of Virginia, and is teaching the courses of Dr. George W. Spicer in the second term of the summer session. Dr. Spicer is on leave in the second term to pursue his research on the growth of executive power in Virginia.

Under the auspices of the Committee on Civic Education by Radio and the American Political Science Association, in coöperation with the National Municipal League, an eighth series of "You and Your Government" radio programs was started on June 26 on the general topic, "A

New Deal in Local Government." The closing talks of the series will be as follows:

- Aug. 21 Higher Administrative Standards  
William Anderson, University of Minnesota.
- Aug. 28 Housing and Slum Clearance  
Ernest J. Bohn, President of National Association of  
Housing Officials.  
Charles S. Ascher, Director of the same.
- Sept. 4 Reconstruction in a Metropolitan County  
Russel Sprague, Chairman of Board of Supervisors, Nassau  
County.
- Sept. 11 County Home Rule  
George W. Spicer, Chairman of Virginia Commission on  
County Government.
- Sept. 18 A Suburban New Deal  
Carl H. Pforzheimer, Chairman of Westchester County  
Commission on Government.  
Mrs. William H. Lough, Secretary of the same.  
Luther Gulick, Director of Institute of Public Administra-  
tion.
- Sept. 25 A New Deal in Civic Education  
A. N. Holcombe, Harvard University.

## BOOK REVIEWS AND NOTICES

*Crisis Government.* By LINDSAY ROGERS. (New York: W. W. Norton and Company. 1934. Pp. 166.)

This is a study of democracy with its back to the wall. It is an analysis of the world-wide governmental crisis in the endeavor to reach some conclusion as to whether the libertarian forms of government which developed during the nineteenth century must inevitably give way to some variety of authoritarian rulership. This general question in all its varied phases is presented with great skill and acumen by a scholar who possesses a broad and accurate grasp of the world's political troubles at the present hour.

Professor Rogers has not attempted to write a systematic treatise on the principles or practice of governmental reorganization. His aim has been merely to touch the high spots in the hectic interlude of revolution, reaction, reconstruction, and reform which the world is passing through. The idea is to give his readers some inkling of what these happenings mean and where they seem to be leading us.

The book begins with a survey of the war-nurtured attempt to make a world safe for democracy. On the morrow of the great conflict, there was a general gaol delivery of peoples who had been held in varying degrees of political bondage, with results which any thoughtful student of comparative politics might have foreseen. Benjamin Disraeli once remarked that mankind had never discovered but two methods of rulership, namely, government by tradition and government by force. Some of the democracies which were the progeny of the war had no fixed traditions. Inevitably they soon swung to the other alternative.

The author then traces in some detail the spread of dictatorship, interspersing lively comments as he goes along. A good deal of attention is given to Fascism and Hitlerism in their varied phases. Another stimulating chapter reviews the various compromises with autocracy which have had to be made by divers European governments in the effort to keep democratic edifices from crumbling. The sinuosities of national politics in Great Britain and France during the past dozen years are briefly sketched. From this survey Professor Rogers concludes that a well-anchored democratic government can hold measurably well to its course in any ordinary crisis when it sets out to do so, and that resort to a dictatorship is neither essential nor inevitable in countries where traditions of constitutionalism are firmly set. When a parliament or congress temporarily transfers praetorian powers to the chief executive for use in an emergency, such action is often hailed as an indication that representative government has gone bankrupt, but Professor Rogers believes that it ought to be hailed as an indication of the resiliency and resourcefulness with which free government is endowed.

The later chapters of the book deal with crisis government in the United States. The significance of the shift from Hoover to Roosevelt is given a twenty-page discussion which is well worth reading whether one agrees with the author's point of view or not. In any event, here is a writer who does not believe in evading issues or concealing his own opinions. Perhaps he would not be willing to die for any of the opinions expressed in this little volume, but he has at any rate given his readers some things to think about, including his parting shot that "anyone who has seen government and industry at close range should be convinced that attempts by the former to administer the latter would in the United States be accompanied by waste and suffering far greater than the waste and suffering of a rugged individualism."

WILLIAM B. MUNRO.

*California Institute of Technology.*

*Do We Want Fascism?* By CARMEN HAIDER. (New York: John Day Company. 1934. Pp. 276.)

*B. U. F.; Oswald Mosley and British Fascism.* By JAMES DRENNAN. (London: John Murray. 1934. Pp. 293.)

The first of these two books consists of two parts, one dealing with the rise of Fascism in Europe, the other with the situation in the United States. The former is the best brief analysis of the Fascist movement in Italy and Germany which has come to the attention of this reviewer. Miss Haider's previous work, *Capital and Labor under Fascism*, furnished convincing evidence of her competence for her task. Her diagnosis of the political and economic conditions under which Fascism developed is excellent. It is more dispassionate and objective than that in Strachey's *The Menace of Fascism*, with which it is most comparable, and will be more serviceable to American teachers of comparative government. The chapter on the fundamentals of Fascism, however, reflects an attitude toward Fascism not radically different from that of Strachey.

The latter part of Miss Haider's book is somewhat less satisfactory. The author indicates clearly enough the possibility of Fascist movements in the United States and sets forth the grounds for her conviction that such movements are to be deplored. But she does not give a clear answer to her main question. For whether we want Fascism depends partly upon our consciousness of a freedom of choice in the matter, and partly upon the nature of the alternatives. Miss Haider apparently does not believe that Fascism is inevitable in America, but whether it is to be avoided by maintaining somehow the present political and economic order or only by choosing a form of socialism or communism remains in doubt. The root of the difficulty seems to be a failure to distinguish between the various

forms of class struggle which may be possible in such a country as America.

The volume on Mosley and British Fascism is the work of the ablest of the theoreticians in the British Union of Fascists. It is strongest where Miss Haider's analysis most needs supplementing, that is, in its portrayal of the psychological environment of Fascism. Its strength lies, however, not in any deliberate treatment of the psychopathology of the British population, but in the whole tone of the book, which unconsciously betrays the temper of British Fascism. A perusal of the volume will confirm the reader's disposition to sympathize with Miss Haider's reaction against all Fascist movements, wherever they may be found. It will also throw light on the problem of avoiding them, if circumstances should conspire in their favor. For the development of the Fascist movement in Great Britain has been manifestly promoted, if not entirely produced, by the avoidable errors of the British Government itself.

ARTHUR N. HOLCOMBE.

*Harvard University.*

*New Governments in Europe.* EDITED BY RAYMOND LESLIE BUELL. (New York: Thomas Nelson and Sons. 1934. Pp. xiv, 440.)

The publications of the Foreign Policy Association, in the form of *Foreign Policy Reports*, are well known to students of public affairs. The Association, through its interest in and studies of political developments in the various parts of the world, is able to present up-to-date accounts in respect to certain countries and their institutions which are apparently in never-ending flux. The volume entitled *New Governments in Europe* is a collection of such accounts, revised at the last possible moment and elaborately documented. They deal, as the sub-title indicates, with "the trend towards dictatorship." The collaborators consist of two members of the staff of the Foreign Policy Association and two able teachers. A short preface has been written by the editor.

Three sections of the volume are contributed by Dr. Vera Micheles Dean. An introductory section of some twenty pages, "The Attack on Democracy," strikes the key-note of the several studies. The other two sections are studies of Fascist Italy and Soviet Russia. They are placed first and fourth respectively in the series of five studies. They are satisfactory accounts of what are doubtless the best established and most important of the European dictatorships.

The second section, that by Dr. Mildred S. Wertheimer on the Nazi Revolution, is perhaps, from the nature of the case, the most difficult attempt made in the volume. Though the Third Reich has only recently celebrated its first birthday, this section manages to compress within re-

stricted limits a formidable amount of interesting and important material. The study sketches the evolution and nature of German nationalism and of the National Socialist party; it traces the events of the political situation immediately preceding the National Revolution; it gives, in a compact and especially important chapter, an account of the establishment of the Third Reich; and, finally, it deals with the position of the Jews in Germany today.

In a third section, entitled "Stability in the Baltic States," Professor Malbone W. Graham, of the University of California at Los Angeles, briefly traces recent political events successively in Finland, Estonia, Latvia, Lithuania, and Poland.

The final section is concerned with "Spain under the Republic." At the risk of odious comparison, one is tempted to award it first prize as the most successfully organized and executed of the several studies. The author is Mr. Bailey W. Diffie, of the College of the City of New York.

R. K. GOOCH.

*University of Virginia.*

*The Growth of Executive Power in Germany; A Study of the German Presidency.* By HARLOW JAMES HENEMAN. (Minneapolis: The Voyageur Press. 1934. Pp. xv, 256.)

The present volume contains a rather extensive discussion of a very significant topic. The material is presented in readable fashion, partly from an historical and partly from a legal or analytical point of view. As the title indicates, the author traces the various aspects of the growing presidential power in Republican Germany, a development which ended abruptly in 1933. In the first chapter, entitled "From the Pre-War to the Post-War System," a rather legalistic sketch of the imperial constitution provides the background for a discussion of the transition into which it drifted during and after the War. The author's failure to use the extensive materials gathered by the parliamentary investigating commission on "The Causes of the German Collapse in 1918" and similar documentary evidence deprives his analysis of striking originality or profound insight. Again, the notion that the pre-war German government was "absolutist" suggests a certain lack of historical background.

When Mr. Heneman comes to consider "The Constitutional Assembly and the Presidency," he is on surer ground; and having made a careful study of the essential documents, he arrives at statements which can be accepted as substantially accurate, although unfortunately they are not summarized succinctly. In fact, there is a certain diffuseness to the whole discussion which could, in the opinion of the reviewer, have been avoided by the condensation of conflicting points of view.

In Chapter III, the "General Nature of the Presidency" is outlined, and a comparison with the French and the American presidential power is woven into the discussion. This chapter serves as an introduction to the more detailed discussion of the following three chapters, which are concerned with "Presidential Authority in Administrative and Legislative Affairs," "President and Cabinet," and "Presidential Powers under Article 48." Though the author avoids distinct partisanship, he does not see far beyond the dogmatic constitutional veil as it hung over the Weimar Republic. And again, the sources are insufficient. Several doctor's theses, some of them rather insignificant, are cited, while important material of less obvious location, such as the lengthy diaries of Stresemann, is entirely omitted. The discussion also lacks theoretical comprehension. The intrinsically important chapter on president and cabinet begins with a contrast between English and French parliamentary government, but without showing familiarity with the special contributions in this field of men like Barthélemy, Hatschek, Kelsen, or Smend, to mention only some of the better known authors. A further exploration of these earlier studies would have broadened the author's comprehension of the general problems and helped him in eliminating mutually conflicting views and interpretations. It would also perhaps have persuaded him of the desirability of drastic cutting in his presentation of well known facts and views.

A valuable feature of the book is two chapters on "The First President: Friedrich Ebert" and "Paul von Hindenburg, President," although they too could have been made considerably more valuable if readily available documentary evidence had been studied. At least Scheidemann and Stresemann would seem entitled to a hearing, particularly since a whole section of the latter's diaries is concerned with the election of Hindenburg, and others with the difficulties encountered by Stresemann in securing the aged Field Marshal's adherence to the policy of Locarno.

In summary, it may be said that we have in Mr. Heneman's book a good beginning for a really valuable study on an important topic of comparative government.

CARL JOACHIM FRIEDRICH.

*Harvard University.*

*The Growth of the National Government, 1915-1932.* By CARROLL H. WOODY. (New York: McGraw-Hill Book Company. 1934. Pp. xiii, 577.)

This is one of the series of monographs prepared for the use of President Hoover's Committee on Social Trends in the preparation of its report on "Social Trends in the United States." Among social trends, few are of greater importance than the changes that may be taking place with

respect to the rôle of government in the social and economic life of the people. The American people started their independent existence with the two deeply rooted correlative beliefs that, in the political field, that government was best that governed least and that, in the field of economics, in the doctrine of *laissez-faire* was to be found the fundamental basis for economic endeavor. It is hardly necessary to say that, though both of these beliefs are still widely held, circumstances have compelled a sharp departure from them in practice.

It is one thing, however, to recognize a general fact and another to have detailed information regarding the extent to which this expanding rôle of government has proceeded and the particular directions that it has taken. In the work under review, the author has attempted to supply this information so far as the national government is concerned. The great bulk of the work is given over to a detailed listing and description of the existing activities of that government, with an indication of the extent to which these activities have been entered upon during the period under review. In the publication of this statement, the author has drawn heavily upon the publications of the Institute for Government Research, and particularly upon the latter's sixty-five "Service Monographs of the National Government." He has, however, performed a large amount of labor in the way of bringing the data therein contained down to date and in supplementing them by information drawn from the administrative reports of the several services and other documents and from responses made to direct inquiries addressed to the services. The result is that nowhere else can there be found within the compass of a single volume so complete a picture of the administrative activities of the national government in 1932.

A mere enumeration of the activities of a government, even though accompanied by information regarding the dates at which they were first entered upon, is not sufficient to accomplish the primary objective of the study—that of revealing basic trends. To do this, such information must be supplemented by data indicating the volume of these activities, the relation that this volume bears to that of the activities of other governmental bodies and the sum total of activities representing private action, and the functional character of the new activities assumed. To state this in another way, the really important information that it is desirable to have with regard to the growth of a government is whether this growth is disproportionate to the growth that has taken place in other fields of endeavor, and whether it represents the entrance of the government into entirely new fields. These *desiderata* have been fully appreciated by the author, and the data presented have been subjected to analysis for the purpose of throwing light upon these general matters.

To the political scientist, the most important point brought out by the

analysis is that, while a great increase in the total volume of activities by the national government took place during the period covered, this increase was almost wholly within fields previously occupied. Where new fields were entered, it was due, for the most part, to the rise of new inventions, such as aviation and radio, the nature of which practically compelled action by the government of a promotive and regulatory character. In a word, the study reveals but little change of opinion on the part of the American people with respect to the part that their national government should play in the conduct of their affairs, from what may be termed the purely functional standpoint. Practically the only new function assumed by the national government during this period was that of acting as an agency for the financing of private enterprises through the grant of reimbursable loans and the acquisition of the securities of newly created corporations such as the Federal Farm Loan and Intermediate Credit Banks, the War Finance Corporation, and its successor, the Reconstruction Finance Corporation. The history of the period does show, however, a greatly increased tendency on the part of the national government to coöperate with the states in the performance by them of certain of their functions, such as the construction of highways, the provision of vocational education, the care of public health, and the like. In the field of criminal law, the national government has also greatly expanded its responsibilities, an expansion which there is every indication will continue with increasing force.

One cannot read this study, however, without the feeling that, while it traces faithfully events of the period covered, it by no means affords an accurate picture of trends at the present time. In combatting the unexampled industrial depression from which the country is now suffering, the national government has taken to itself new responsibilities that cannot fail profoundly to modify the place that it will occupy in our political system in the future. It remains for a future historian, however, to point out and comment upon the significance of these changes.

W. F. WILLOUGHBY.

*The Veterans' Administration; Its History, Activities, and Organization.*

By GUSTAVUS A. WEBER AND LAURENCE F. SCHMECKEBIER. (Washington: The Brookings Institution. 1934. Pp. xi, 490.)

This volume is No. 66 of the "Service Monographs of the United States Government," the well-known series the first number of which was published by the Institute for Government Research in 1918. In general, it follows the "uniform plan" of the series (p. vi). Three chapters deal at length with "History," "Activities," and "Organization," and three appendices with "Plant," "Laws and Executive Orders," and "Statistical Tables," there being thirty-nine of the latter.

The historical chapter begins with "colonial veterans' relief" and carries the story to January, 1934. On March 28, 1934, the Independent Offices Appropriation Bill became law over the veto of President Roosevelt. Thus does history repeat itself. "No less than eleven bills relating to veterans . . . [have] been vetoed from 1922 to 1932, and four passed over the Presidential disapproval; no doubt others were materially modified as the result of executive pressure" (p. vi). In this connection, it is worth noting that on June 30, 1932, the beneficiaries "(exclusive of insurance and adjusted compensation) number almost 1,600,000 persons" (p. v). Did not somebody say recently that the gravest danger of democracy lies in the temptation of officials to give and of the people to accept bribes formally appropriated out of the treasury? Are otherwise justifiable measures of the New Deal corrupting the American democracy in this way?

It is trite to remark that public administration is rapidly becoming one of the first problems of government. These service monographs represent painstaking compilation and organization of data. They do what they purport to do; they render information "available in such a form that it can be utilized readily" (p. v). They are "wholly descriptive. . . . The primary purpose . . . is to present the facts" (p. vi). But how many monographs will it take to present all the facts about all branches of federal administration? Would the Institute's energies not be better distributed if its monographs did "evaluate the legislation that has been enacted" and "point out defects in administrative organization" (p. vi)? Then facts could be selected to some end, whereas now all facts must be included because there is no criterion of selection, and there is no time or energy left for a contribution to the art of public administration. "Upon the public, legislators, and administrators falls the responsibility for making changes" (p. vi). But certainly the responsibility falls upon research institutions for telling them *what* changes to make. This is said with all respect for the care and labor of the authors. What they do is of value in absolute terms, but the reviewer must record his belief that they could do something of greater relative value in this finite world.

JAMES HART.

*Johns Hopkins University.*

*Municipal Administration.* By WILLIAM B. MUNRO. (New York: The Macmillan Company. 1934. Pp. viii, 699.)

Every writer on municipal administration is indebted to Professor Munro, whose pioneer texts, published in 1915 and 1923, have done so much to stimulate an interest in applied political science. The present volume is the only book on municipal administration that has appeared since 1929. Lent D. Upson's *The Practice of Municipal Administration*

(Century Company) appeared in 1926, and Austin F. Macdonald's *American City Government and Administration* (Thomas Y. Crowell) in 1929. As Professor Munro points out in his preface, the changes in the technique of municipal administration during the past ten years have been so frequent and of such far-reaching importance that relatively little of the material in the 1923 volume has proved useful in preparing this new edition. For example, the present volume contains new chapters, not contained in the 1923 volume, on traffic regulation, special assessments, abatement of nuisances, inspection of weights and measures, law department, hospitals, public libraries, municipal airports, the city clerk, and various other activities. The material, written in an easy and readable style, is very well organized in logical sequence in forty-six chapters, under the following main headings: administrative organization and personnel, staff departments and their work, municipal finance, city planning and public improvements, public safety, public welfare, and public utilities.

The organization of material and the chapter headings give the impression that the book has been thoroughly revised, but a careful reading of certain chapters indicates that it is not strictly up to date. While it does indicate some of the current problems of administration, the treatment is very general, many of the references at the end of the chapters are of slight value or are out of date, and practically no attention is given to the highly important recent changes in governmental relationships and their effect on administration. The first three chapters give the impression that city government is still excessively partisan, that public service is still a blind alley, and that "there is hardly a single large city in the United States of which it can be said that political considerations have been altogether eliminated from the making of higher appointments, or have even been reduced to a secondary place in determining the choice." Public administration is compared to private business to the disadvantage of the former, and "municipal employees give a smaller return for their wages than do those who work for private corporations. The only question is how much less?" (p. 36); and the "listlessness of city employees has become proverbial." No mention is made of the excellent work that the professional organization of public officials is doing in improving the administrative service from within and in professionalizing the public service; nor does the author indicate that he is familiar with the training courses offered by many state municipal leagues for various classes of municipal officials.

The reviewer has difficulty in following the author's argument against the administrative board of health (p. 489) while maintaining that the use of the board system is desirable in the administration of personnel, schools, libraries, recreation, and public welfare (pp. 27 and 39). If local

government is to be made more effective, it would appear that we must have still fewer administrative boards and a better integrated municipal administration. There is every indication that the present trend is in that direction.

The statement that more than three hundred cities, including Akron (p. 12), are operating under council-manager government seems a bit archaic in view of the fact that there were 304 cities operating under the manager plan in 1925, that Akron has not operated under the plan since 1923, and that at present there are 425 cities and six counties in the United States with council-manager government.

The chapters on public welfare and housing might as well have been written five years ago. No reference is made to the new relationships and problems in public welfare, perhaps because "amelioration of poverty is not regarded . . . as primarily a public problem." The reader will not so much as discover that there are any public housing authorities in this country.

These shortcomings of Professor Munro's book are not entirely the fault of the author, because even those who are constantly in touch with local government developments find it difficult to keep up to date. This is one reason why a textbook on municipal administration is out of date almost before it can be published.

CLARENCE E. RIDLEY.

*University of Chicago.*

*The City-Manager Profession.* By CLARENCE E. RIDLEY AND ORIN F. NOLTING. (Chicago: University of Chicago Press. 1934. Pp. xv, 143.)

In 1927, Dr. Leonard D. White gave us *The City Manager*—a book which called attention to a new type of municipal official. Since that time the term "city manager" has become much better known and there have come to be many more city managers. Attempts have been made in much fugitive writing to bring this public functionary into some kind of focus and to get a picture of some accuracy. There still remains a widespread impression, however, that here is just a new name and perhaps little else. Fond of devices, Americans have turned to another, but municipal administration remains a kind of game none the less.

Now comes a volume by Clarence E. Ridley and Orin F. Nolting which should be welcomed by all who are interested in the point of view of those who think that they are developing a new profession in the field of public management. Seven chapters discuss, in turn, the idea of the appointive municipal executive, the position of city manager, qualifications, training, selection, and the professional idea. One chapter describes the activities of the City Managers' Association and one analyzes the records of the men in the service. An appendix provides a directory of city and

county managers, the manager code of ethics, and suggested forms for use in selecting a manager. A selected bibliography is included.

In some sense, this is a book about managers by themselves. It is not a treatise on municipal government. The fact, however, that 425 cities in the United States have city managers means that it is worth the while of any student to look inside of the "profession" and understand the point of view of the managers. That point of view coincides at many places with that of those who wish to see municipal life seek higher levels. It begins with the determination to get rid of spoils, to keep administration out of politics, and to develop scientific technique in public administration; and it continues with the desire to give such service a real dignity and a new place in public estimation.

Now that counties are turning to the city-manager field for the new county executive, called a manager, it is high time that there be available a little volume such as the one here described. The book is a first attempt at self survey by a new group of administrators who are attaining self-consciousness.

C. A. DYKSTRA.

*Cincinnati, Ohio.*

*Woodrow Wilson.* By EDITH GITTINGS REID. (New York: Oxford University Press. 1934. Pp. xi, 237.)

Mrs. Reid, a product of Baltimore's best social and intellectual tradition, describes Woodrow Wilson the individual. In her own words, "my aim is to draw a portrait of the man I knew so well." From his days as a university student until his last hours in the little house on "S" street, Mrs. Reid knew him very well. The picture she draws of him is the best we have. The personality of the man stands out as Theodore Roosevelt does in that remarkable book by Owen Wister—*Roosevelt; the Story of a Friendship.*" In many respects Mrs. Reid's book is the best we have on Wilson. It is sketchy at times, as a brief book must be, but it is wonderfully well done and with a sure touch.

The volume is enriched with records of conversations and letters between the two running through many years. One of the best things is the excerpts from the unpublished diary of William Starr Myers describing Princeton faculty meetings. Mrs. Reid understands Princeton, as Mr. Baker certainly did not. And what is much more difficult, she understands Princeton psychology. She describes better than anybody else has done Wilson's Bryn Mawr days and gives us the clue to his dislike of Bryn Mawr. There is an interesting statement concerning his attitude towards colored people. Mrs. Reid's reference to Keats' "The Eve of Saint Mark" gives the key to Mr. Wilson better than anything I know.

Mrs. Reid, however, falls into some curious errors. The first arises

when she endeavors to show that Wilson was not a Southerner. This is nonsense. Mr. Wilson was born in Virginia and spent his first nineteen years exclusively in the South, including a period of residence in Columbia, South Carolina. He always regarded himself as a Southerner and had the attributes and qualities of that region. The author does not understand Dean West. He is a man of much finer and broader sympathies than she intimates. Also Wilson's ambition to be President of the United States, while it came late (1906 or 1907), definitely antedates his governorship of New Jersey. Mrs. Reid does not discuss Wilson's lack of Continental European travel, which was one of his chief drawbacks. She makes mistakes in the date of his birth and the name of the cathedral where he is buried.

The book is a great record of his battles and achievements, and in it, in the language of Professor Harper, "we contemplate as in a dream the promise of peace on earth which he wrote upon the sky."

PAUL M. CUNCANNON.

*University of Michigan.*

*Miners and Management.* By MARY VAN KLEECK. (New York: Russell Sage Foundation. 1934. Pp. 391).

This work is divided into two parts. The first (pp. 31-175) is an intensive study of union-management coöperation in the Rocky Mountain Fuel Company, under the inspiration and guidance of the president, Josephine Roche, a remarkable woman well-trained in the best traditions of American social philosophy. In this section, the findings and conclusions are organized under the following heads: principles of agreement with the United Mine Workers of America; support for and opposition to the project on the part of the district mine workers, the state federation of labor, other organizations of workers, consumers of coal, other companies, the daily press, and the general public; the collective agreement; labor's productivity; marketing and prices; competition and wages; adjustment of grievances; and measurable results.

Here a single mining concern is placed under a microscope. Its internal structure—relations of labor and management—and operations are subjected to a minute examination. Then its relations to the coal-consuming public, its appeal to humane interests of coal-buyers for support in a highly disorganized and competitive market, are drawn under scrutiny. At the end, the measurable results are tabulated. On the whole, the Rocky Mountain Fuel Company has more than held its own in the markets of the state of Colorado; its operating profits have increased; it has met the interest on a large bonded indebtedness promptly; it has maintained a wage scale for the miners set by agreement; and it has increased the stability of their employment.

It is impossible to set forth in a brief review the details which make this survey of human relations one of the most important social documents of our time. Here is an intimate picture of a single industry amid competitive industries beset by strikes, riots, disorders, poverty, and degradation—a single industry put on its feet and maintained by determined and enlightened management. Here is a revelation of ways in which labor and management *can* coöperate, despite innumerable difficulties, and maintain fairly stable relations. Here also is insight into the reactions of the press and general public to an effort in the direction of decency and stability in a troubled industry. In reading this dramatic story—dramatic despite the sober language in which it is couched—one is moved to ask: What have the sons of our great captains of industry educated in our colleges been doing that they should leave the business of social leadership to a lone female of the species? And the additional question: What effect, if any, has training in the social sciences had on the heirs of gigantic fortunes?

The second part of Miss van Kleeck's volume is a brief survey of the coal industry as a whole—a story of waste, insecurity, cut-throat competition, strikes, poverty, and degradation. Here is an industry that has long been "sick." Management, notwithstanding ups and downs, has been in distress and turmoil; and labor has suffered from uncertainty, unemployment, and demoralizing conditions of life and work. Again and again government has been called upon to intervene on behalf of the "public." Commission after commission has investigated it and reported in favor of heroic action. The United States Coal Commission, in 1923, declared that the coal problem "can only be solved by the Federal Government in coöperation with the industry, working on a national scale and with a clearly defined policy." Yet, today, the coal industry is still in confusion and distress.

Miss van Kleeck proposes to cut the knot: "socialization of all natural resources as part of a planned economy is the only solution for the breakdown of the coal industry in the United States." She would place the entire coal industry under the direct auspices of the Federal Government and have it carried on under scientific management—the rationalized coöperation of technicians and workers. To bring matters down to concrete cases, Miss van Kleeck indicates the lines along which such management should proceed in operating, stabilizing, and conserving the coal industry. At the end, she pertinently suggests that students of economics and government should draw together, pool their resources of knowledge, and take leadership in the solution of such great problems of political economy. This is a challenge that cannot be lightly dismissed.

CHARLES A. BEARD.

*New Milford, Conn.*

*Our Next Step—A National Economic Policy.* BY MATTHEW WOLL AND WILLIAM ENGLISH WALLING. (New York and London: Harper and Brothers. 1934. Pp. x, 199.)

Business leadership—or the want of it—was “largely responsible for bringing us where we are.” The basic cause of the depression was excessive profits and deficient mass purchasing power.” “The purchasing power of the masses during the entire period of prosperity failed to keep up with the rising productivity of industry.” “What organized labor has objected to for at least a decade is not only excessive profits but still more the domination of profits and profit-makers over industry, which is even more damaging to the general welfare.”

Such being the cause of our present crisis, as these authors see it, the ways out flow from these tenets. They are: higher wages, greater power to labor organizations, less power to business management, greater federal control, especially over corporations, over credit and banking, and over profits and prices. Since higher wages mean higher prices, our export trade must lag, and therefore our policy so far as practicable must be one of “economic nationalism.” “Since the American tariff principle requires duties in proportion to the difference in the cost of production at home and abroad, every important step in raising the American standard of living must bring a corresponding increase in the tariff.” Our “Next Step” is “the definitive adoption of a national economic policy” that is “based on a progressive raising of the standard of living of the masses of the population.”

Matthew Woll is a member of the Executive Council of the American Federation of Labor. William English Walling has “supported the American Federation of Labor with his pen for over two decades.” The foreword to the volume is by William Green, president of the American Federation of Labor. The book, therefore, presumably presents the future as the officials of the American Federation of Labor view it.

The authors do not face any of the real problems involved in carrying out the solutions they present. How are we to reduce cotton and tobacco production by forty per cent, and general agricultural output by twenty per cent, so that our agriculture can have a standard of living based solely on domestic prices protected by high tariff walls? What of the difficulties of administering adequate, and hence complete, federal control over profits and prices? No doubt some of the experiments now being carried on will help set the practical limitations to these matters.

CLYDE L. KING.

*University of Pennsylvania.*

*Modern Hispanic America.* EDITED BY A. CURTIS WILGUS. (Washington: George Washington University Press. 1934. Pp. ix, 630.)

This first volume of a series of Studies in Hispanic American Affairs

published by the George Washington University Press presents the lectures given at a seminar held in July and August, 1932. The object of the sessions was to give an introductory survey of the field of Hispanic American history, culture, and international relations. The sixteen contributing authors are well known students of Latin America, most of them connected with leading American universities.

The discussions have the merits and limitations of all collections of material of this nature. They are of necessity rapid reviews in which generalizations usually must displace analyses of detail, and they lack the connective tissue which can be expected in a well planned text. On the other hand, they have the merit in most cases of the freer literary style which finds its way into discussions prepared for oral presentation and lack the emphasis of detail which in more restricted studies often makes the reader feel that the author "fails to see the forest for the trees."

The first four lectures present an historical review of the establishment of Spanish control, the political and economic administration of the Indies, and the powerful rôle played by the Roman Church in the colonial period. These are followed by studies of modern political, economic, and social developments and discussions of international relations. Analyses of the position of the Caribbean fruit industry, the earlier developments in "guano diplomacy," and the attitude of the British bond-holders toward the Roosevelt corollary to the Monroe Doctrine present special phases in clearer outline than is possible in the survey chapters.

It is not to be expected that a volume of this sort will have unity of interest, but its chapters have very decided value for the reader who seeks first a general picture of the background of Latin American life, supplemented by a number of studies of some of the influences which shape current developments. With its companion volumes, still to be published, the present book should do much to make easily available to the public materials bearing on the still neglected Latin American field of study.

CHESTER LLOYD JONES.

*University of Wisconsin.*

*British Colonial Government After the American Revolution, 1782-1820.*

By HELEN TAFT MANNING. (New Haven: Yale University Press. 1933.  
Pp. xii, 568.)

The period covered by this book, the doldrums of British imperial history, has hitherto remained largely uncharted except for isolated subjects and separate colonies. Dean Manning here surveys the period as a whole and from the imperial point of view.

The liberal policies of Selbourne which made possible a rather magnanimous treaty of peace with the late revolted colonies, and which promised

freer trade and a larger measure of self-government for the remaining colonies, was of short duration. By 1784 the old régime was again in the saddle; the late colonies were largely excluded from West Indies trade; a policy of rebuilding a self-contained empire was continued; and the old restraints on colonial self-government were added to. The only lesson England seemed to have learned from the Revolution was the inexpediency of legislative interference in internal colonial affairs. Markets were the pressing commercial need of the day, and the Empire was still looked upon in official circles as the obvious answer to the problem. One development was the establishment of several free ports in the remaining American colonies to encourage the distribution of manufactures to the new United States and to Spanish colonies in the south. Except in India, imperial expansion during the period was less the result of deliberate policy than the indirect consequence of commercial expansion. As respects administrative technique, eighteenth-century methods carried on into the nineteenth. Only in Canada and Dutch South Africa, where the Empire faced the problem of governing alien peoples, was there real scope for experimentation; but methods even here were largely traditional except as local conditions forced changes. Almost imperceptibly, administrative methods were becoming more elastic. Yet it is only too obvious that the changes in imperial policy which began with Huskisson's great fiscal reforms after the period under review were due, not to enlightenment in the Colonial Office, but to pressure of economic changes.

If the results of Dean Manning's inquiry are largely "negative" as respects discovering significant developments during the period, her book is none the less important. It fills a gap which has been only too obvious in imperial history. Her work is objective, comprehensive in its scope, if not exhaustive on all of the subjects touched upon, well arranged, clearly written, and thoroughly documented. Students of the period, whether concerned with the imperial or with the colonial side, will find her book an almost indispensable guide.

ROBERT A. MACKAY.

*Dalhousie University.*

*The Soviets at Geneva.* BY KATHRYN W. DAVIS. (Geneva: Librairie Kun-dig. 1934. Pp. 315.)

This study of Soviet Russia's relations with the League of Nations is as thorough and readable as it is timely. Publicists of internationalism have hitherto paid scant attention to the problem of fitting proletarian Russia into the liberal-democratic-bourgeois framework of world organization, yet that problem, admittedly a difficult one, must be grappled with if the League is to become in fact what it is in aspiration. Dr. Davis's careful account, based on an exhaustive use of League documents and

other sources, provides the necessary point of departure for any examination of the possibilities of future coöperation.

Notwithstanding Soviet characterizations of the League as an anti-Bolshevik organization and an ineffective, not to say hypocritical, instrument of peace, the U.S.S.R. has found it to its advantage to participate in a number of technical activities of the League, notably economic conferences, and in the political work of disarmament, though consistently eschewing—until very recently—other forms of political collaboration. Incidentally, a comparison between the extent of Soviet co-operation with the League and that of the average League member would have made an interesting addendum to the book. While Soviet coöperation has been relatively small, it has been more extensive than is generally realized, and on disarmament contributions have been large.

As described by the author, Soviet relations with the League fall into four stages: a period of non-recognition and aloofness, lasting roughly until 1922; a period of cautious coöperation in non-political fields, ending with Locarno, which was interpreted in Moscow as an anti-Soviet alignment; a third period, following Germany's entry into the League, characterized by increased interest and participation in League activities, which took the form, however, of criticism rather than coöperation; and a fourth period, beginning in 1932, of progressive *detente* with the League and League members, which now bids fair to culminate in close political coöperation, and even in actual membership. This remarkable and rapid evolution of Soviet foreign policy, the effects of which on its attitude to the League are traced by the author up to the beginning of 1934, is explained by Soviet leaders (e.g., Karl Radek in *Izvestia*, May 29, 1934) on the ground that changes in the composition of the League have made it no longer an enemy, but a potential ally, of the Soviet Union's own well established policy of peace.

Although the author fairly describes herself as "at once sympathetic to and critical of both the Geneva and Moscow experiments," her sympathies are directed preponderantly toward Geneva, her criticisms toward Moscow. In particular, her free use of the dangerous word "propaganda" may possibly give rise to misconceptions. It is true that Soviet representatives at Geneva have made propaganda in the dictionary sense; but the reviewer's reading of the documents inclines her to believe that, taking the period as a whole, this "propaganda" was intended at least as much to convince the governments of the world of Soviet Russia's peaceful intentions, economic stability, and credit-worthiness as to stimulate popular revolt against those governments. Furthermore, much of what was labeled "propaganda" by opponents was advanced in support of the Soviet Union's position on the questions under discussion—a perfectly respectable procedure at international conferences.

The author's greater familiarity with the Geneva viewpoint is revealed also in her evaluation, in the last few pages, of Russia's possible motives for closer coöperation with the League. The arguments advanced were obviously made in Geneva and not in Moscow, and therefore lose sight of the fact that Soviet *rapprochement* with the bourgeois peace machinery, is, for Russia, a frankly temporary strategy; this attitude is clearly implicit in various public statements by Soviet leaders. Whether the attractions of Geneva will make the attachment a permanent one is, of course, another matter.

Notwithstanding all this, Dr. Davis's treatment is, on the whole, remarkably objective. She has written a valuable and penetrating book, which should be indispensable to students of the Soviet Union and of the League of Nations.

MIRIAM S. FARLEY.

New York City.

*Du Droit de Paix: De Jure Pacis.* By C. VAN VOLLENHOVEN. (The Hague: Martinus Nijhoff. 1932. Pp. xi, 251.)

Seldom does one encounter a book which may be praised so wholeheartedly as this excellent work by the late Professor van Vollenhoven of Leyden. Its striking originality, thorough historical erudition, and vigorous cogency of thought stamp it as one of the most important publications of recent years. It contains in book form material originally prepared as lectures to be given at the Academy of International Law at The Hague, which Professor van Vollenhoven was prevented by illness from delivering.

The author calls attention at the outset to the fact that most writers on the law of peace (in spite of the example set by Neyron and Pütter) have been content to give either a history of international politics and diplomacy on the one hand, or, on the other, a history of the theories and opinions held by previous writers. Professor van Vollenhoven proposes to (and does) sketch the actual history of the positive law of peace. Presenting a wealth of interesting data generally overlooked, he traces the law of peace from its mediaeval beginnings, which came into being following the era of anarchy tempered by the Truce of God. Consular and admiralty functions, commercial associations of the Hansa towns, guarantees for the observance of peace treaties, international conferences and arbitration—all the elements of a rudimentary international organization—had their place in the mediaeval law of peace.

But fatal weaknesses menaced this régime. Lack of good faith among rulers, absence of settled, well-organized states with fixed frontiers and population, and of definite rules prescribing the rights of non-belligerents were among the factors undermining the law of peace. Moreover, the

Crusades, like the wars of Hebraic and Roman antiquity, were regarded as a "holy war," not undertaken in order to uphold the law of peace, but in virtue of a direct spiritual sanction (*Dieu le veut*). The law of war and the law of peace were separate and unrelated. The mediaeval period (1150-1492) thus led to that of the uncontested supremacy of the *Jus Belli* (1492-1780), entirely eclipsing for the time being the law of peace.

The law of peace again began to claim attention when the period of *Jus Belli ac Pacis* (1780-1914) dawned with the rise of armed neutrality, the influence of the United States exerted in behalf of non-belligerents' rights, the revival of arbitration by the Jay treaty, the internationalization of rivers at the Congress of Vienna. On significant occasions during this era, the United States, Russia, and Germany complied with treaties disadvantageous to their own national interests. The solidly organized state system and scientifically elaborated body of law, lacking in mediaeval times, had now been attained. Yet most of the wars from 1898 to 1912 were wars of purely national ambition, not waged for the sake of enforcing the law of peace. The old supremacy of the independent law of war, the holy crusade, survived even into the period of *Jus Pacis ac Belli* (1919-1931), when the need of an organized peace began to be keenly felt. The mediaeval idea of international organization based on individuals acting as organs, not of particular states, but of an international community, was revived.

The period of true *Jus Pacis* has not been attained as yet. But Professor van Vollenhoven finds the foundation on which to base it in Article 11 of the Covenant of the League of Nations, which makes it the duty of the League to stop all wars, just as the police must stop brawls between individuals. In order that the League may effectually perform its task and furnish nations adequate security against aggression, Professor van Vollenhoven favors gradual transfer of national armaments to the League.

It is not beyond the power of modern military science, Professor van Vollenhoven believes, to attain such a geographical distribution of armed forces under international control as will insure the safety of all nations without employing the revolting instruments of modern warfare. Likewise, it is not beyond the ability of modern political science to devise guarantees that such forces shall be used impartially, and for no other purpose than (1) to prevent armed conflict between states, and (2) to execute the decision of an international judge. Recent experience has shown that impartiality in international officials is not unattainable; and constitutional law, with its checks and balances, demonstrates the feasibility of safeguards against arbitrary or illegal action by governmental organs.

EDWARD DUMBAULD.

Uniontown, Pa.

*Internationales Finanzrecht.* By ERNST ISAY. (Stuttgart and Berlin: Kohlhammer. 1934. Pp. v, 285.)

The title of this book is somewhat misleading. The author, a well known writer on legal matters, does not attempt to give a comparative international survey of financial laws or to analyze the many-sided problems of international relations arising out of governmental finance and taxation. The problem is restricted mainly to what he calls the "conflicts" of financial sovereignties, or the *Kollisionsnormen* as opposed to the "material" norms of financial law systems (pp. 8 ff., 18 ff.). Accordingly, the book is divided into two main parts. About half of it (pp. 145-268) describes the treatment of foreigners with regard to each major type of tax (direct and inheritance taxes, *Verkehrsteuern* and consumption taxes, etc.) in Germany and four to twelve other countries, including the United States. The description is based in most cases on first-hand material and uses also the publications of the League of Nations. The reviewer is not in a position to ascertain whether the author has exhausted the subject for each country, but he believes that the author's analysis leads in each case to an understanding of the legal position and to an up-to-date grasp of both legislation and administration.

The rest of the book is devoted to a conceptual discussion, mainly *de lege ferenda*. What should be the line of attack on the question? Under whose financial sovereignty falls an individual or a firm with seats in different countries? The author's theory is opposed to the usual purely legal type of approach, and insists that the decision ought to be on the basis of economically significant characteristics. Whether home or foreign financial law should be applied ought to depend, in his opinion, upon the question: of which country does the object of taxation form economically a part? The economically significant rôle of the object ought to mark, in other words, the line of taxation. Of course, this introduces a number of further questions of definition, which might not be so easily disposed of as the author seems to assume. But at any rate, his approach marks progress on the subject by overcoming the purely legalistic and technical method of distinctions and attacking the matter from the angle which is the really significant one in the case. His further argument (pp. 269 ff.) that the positive laws of most leading countries are in accordance with the postulates of international law as he formulates them is by no means sufficiently convincing.

On the whole, a scholarly work of substantial use for practical purposes as well as for the student of international law, public finance, and to some extent of political science too.

MELCHIOR PALYI.

*University of Chicago.*

## BRIEFER NOTICES

## AMERICAN NATIONAL GOVERNMENT AND CONSTITUTIONAL LAW

In William Beard's *Government and Technology* (Macmillan Co., pp. vi, 599), the usual chapter headings which characterize the orthodox textbook in American government are absent. Instead, such topics as the relation of technology to government, popular control in a technological society, public works, the regulation of public utilities, patents, copyrights, and trademarks are discussed in their special relation to the engineer. The author has assembled an enormous number of illustrations drawn from the entire gamut of engineering activities, the endeavor being to show the increasingly intimate relations which exist between government and technology and to indicate the difficulty of carrying on democratic government in a scientific age. Representing one of the pioneer attempts to deal somewhat exhaustively with the entire field of government and engineering, the treatise lacks a certain synthesis. Mr. Beard complains that an engineer experiences serious difficulty in appreciating the distinction between law and administrative rulings, the principle of the separation of powers, the judicial operations which lead the Supreme Court to declare one law constitutional and another invalid, and the elaborate rules and procedures, which have grown around law-making. A lusty discontent is expressed with the veto, popular election of officials charged with technical duties, the initiative and referendum, and other processes of government when they operate to delay or permanently postpone the construction of dams, canals, bridges, highways, and concrete retaining walls. The difficulty of fitting engineering practises with established political patterns is vividly pointed out. The book, designed for the use of engineering students in courses in government, is well adapted to the class-room. An excellent selected bibliography has been compiled on the various subjects treated, enabling the reader to pursue his particular interest by further reading.—GEDDES W. RUTHERFORD.

The major part of *The American People and Their Government* (D. Appleton-Century Co., pp. xiv, 629), by Arnold J. Lien and Merle Fainsod, is a highly condensed presentation of the material which customarily occupies twice as much space in the conventional college textbook. About 420 pages encompass the organization, function, and control of American government from White House to village hall. This is prefaced by some eighty pages of facts about the people of the United States and its possessions, and is followed by more than 100 pages of appendices and index. The section on population is concerned with such matters as increase and shifts in population, occupations and incomes, immigration policies, and forces making for assimilation of newcomers. The entire

book is designed to present fact in its barest details, leaving to instructor, collateral reading, or other agency, the task of breathing life and color into form. Illustrative anecdote and wise observation are generally lacking. The nature of popular control of government and the interdependency of American and foreign peoples are discussed at greater length than other topics, but even here the pages bristle with points and subpoints inviting memorization. But this task of condensation is performed with unusual accuracy, clarity, and dignity of style; and the instructor who prefers to supply his students with a factual hand-book should greet this text with joy.—CHARLES S. HYNEMAN.

"This book," says President Roosevelt in the initial paragraph of *On Our Way* (John Day Co., pp. xiv, 300), "without argument and without extended explanation, seeks to set forth simply the many significant events of a very busy year. It was a year of redemption and consummation—the redemption of pledges to the people of America and the consummation of the hopes of the many who looked forward to a better ordered common life. I am setting forth the milestones that mark the achievement of a new public policy." The three hundred pages that follow consist predominantly of excerpts from speeches, messages, and letters relating to the country's affairs in the first year of the Administration, with a slender connecting thread of narrative and comment, presumably supplied principally by a "ghost writer." One would not, therefore, expect to find in the volume much that would be new to a person reasonably familiar with the President's utterances and with what has been going on in these latter days in Washington—which is but a way of saying that for the serious student the book has no particular value. The usefulness of the volume as a means of giving the citizen a connected view of things, and incidentally holding his confidence and support for the Administration's leader and his policies, is quite a different matter. One dislikes to apply the much-abused term "propaganda"; but if plausible the persuasive exposition of a plan of action be propaganda of a sort, one will look far for a better example of it than *On Our Way*.—F. A. O.

*American Labor and the Nation* (University of Chicago Press), edited by Spencer Miller, Jr., is a collection of twenty radio talks delivered over a nation-wide net-work between May Day and Labor Sunday, 1932, under the auspices of the National Advisory Council on Radio in Education. The occasion for these talks was the fiftieth anniversary of the American Federation of Labor. The twenty addresses are subdivided into Series 1, which is historical in character, and Series 2, which deals with contemporary problems. The authors are all well known figures in the American Federation of Labor, including its president, William Green, Matthew Woll, Frank Morrison, John L. Lewis, Daniel Tobin, John P.

Frye, Victor A. Olander, James Wilson, Paul Scharrenberg, and others. The topics discussed in the first series include the rise of the labor movement and the contributions made by labor toward the winning of free speech, public education, and politics. The second series considers the problems of the closed and open shop, technological unemployment, collective bargaining, labor legislation, judicial reform, immigration, and the negro. The addresses are clear in language but rather general in thought. The volume is interesting as a summary of the official point of view of the American Federation of Labor as of 1932, but there is nothing in it to suggest the serious changes that were impending in the American labor movement at that time.—LEWIS L. LORWIN.

During the past winter, some nine lectures on various aspects of the New Deal were delivered at Swarthmore College, on the William J. Cooper Foundation, by Messrs. Dickinson, Tugwell, Onthank, Wolman, and other persons connected in one way or another with the enterprise, at the time or in the recent past. Under the editorship of Clair Wilcox, Herbert F. Fraser, and Patrick M. Malin—all of the department of economics of the College—the series has been gathered into a volume entitled *America's Recovery Program* (Oxford University Press, pp. 253). As would be expected, the lectures treat their respective topics on rather broad and general lines; although Mr. Onthank, secretary to the executive of the N.R.A., gets down to brass tacks in describing the actual procedures by which the codes were made. And the points of view reflected are as various as those that have been evidenced in the New Deal as a going concern. The editors supply a terse Introduction in which they do not hesitate, after endorsing various of the Administration's policies, to admit that they "do not look upon the National Industrial Recovery Act, despite its name, as a recovery device." "We conclude," they add, that a program of debt reduction plus sound money plus public works plus tariff reduction, without the N.I.R.A., would have offered us a shorter road to recovery than the one which the Administration has chosen to take." The agricultural program, so optimistically heralded by Mr. Tugwell, is criticized with particular severity.

The second edition of Dr. Lewis Mayers' *A Handbook of N.R.A.* (Federal Codes Inc., pp. xxiii, 842) has recently appeared, bringing the statistical and other information down to the first of this year. With its bi-weekly supplements, it offers the most comprehensive survey of legislative, administrative, and judicial action within the terms of the N.I.R.A. The plan of the present edition follows the main outlines of the first. The act itself is given, together with administrative rulings upon its application in specific instances, and court opinions upon its constitutionality. The following two sections analyze the codes as to particular

aspects, such as labor provisions, price-fixing regulations, use of the "blue eagle," the administration of enforcement provisions, marketing and sales practices, production control, etc. Two sections deal with special instances of the application to industry: the "blanket code," now superseded by the individual industrial codes, and the code for the petroleum industry, which has been placed under the jurisdiction of the Secretary of the Interior. The final sections of the *Handbook* include the texts of the state recovery acts, and of the codes approved to the end of 1933. If the present loose-leaf file of current materials is continued, there is here an invaluable source for the observation and appraisal of administrative practice and judicial action in defining the course of the New Deal experiment. Dr. Mayers has made available to the student and business man much material not easily obtainable in any case, and quite inaccessible to the average library or seminar, and has organized it admirably for both practical and academic use.—PHILLIPS BRADLEY.

In his *Trade Associations and Industrial Control* (Central Book Co., pp. vii, 204), Simon E. Whitney presents in clear style a critical analysis of the National Recovery Act. The book contains chapters on the aims of the act, the precedents for it, and the trade association movement, together with an appraisal of the results of some eight trade associations and a concluding chapter containing some general observations on industrial control. In his preface, the author, who has had academic experience as well as governmental service in the Department of Justice, states that the conclusions reached are adverse to continuance of the Recovery Act. In his concluding chapter, he warns the reader not to overlook the popularity of the competitive system and observes that free competition is the second choice of almost everyone, industrial leaders as well as government officials.—EARL W. CRECRAFT.

#### STATE AND LOCAL GOVERNMENT

Under the title of *American State Government and Administration* (Crowell, pp. xiii, 839), Austin F. Macdonald has written an able addition to the group of texts available for courses on state government. His book will be particularly welcome to those who wish to cover in detail the problems of state administration as well as the standard treatment of state and local government taken for granted in courses on this subject. Professor Macdonald has written concise chapters on each of the important phases of state administration—charity, education, health and highways, to mention only a few. Another significant group of chapters deals with the merit system, state expenditures and indebtedness, and state revenues. The modern problems of the relation of the state to business and to labor are likewise the subject of separate chapters. The

style is lucid and readable. The work as a whole gives a comprehensive review of state government and administration. Each chapter closes with a set of problems for students to work out and a list of selected references. The third edition of the Model State Constitution is included in an appendix. There is a table of cases and a detailed index. Professor Macdonald's work raises the issue of whether or not political scientists should accord to state government and administration the status of a full-year course rather than the customary one-semester treatment following American national government.—A. W. BROMAGE.

Four years ago the prevalence of crime in Chicago had made that city the tragic butt of "gag-men" and political mismanagement of the Chicago police department resulted in a serious recommendation that the entire force be disbanded and be rebuilt from patrolmen to commissioner. At this point, a Citizens Police Committee undertook a survey of the department under the able direction of Mr. Bruce Smith, and fortunately with the coöperation of Captain William F. Russell, who was police commissioner through the period of this preliminary study. The numerous detailed findings were published in 1931 under the title of *Chicago Police Problems*, which, while discussing the police situation in only a single city, is nevertheless one of the few available and worth-while texts on American police organization and administration. This report was followed by an invitation to the survey staff from the Chicago authorities to assist in reorganizing the police department, a task that has been under way for two and a half years. Now in a brief pamphlet—*Chicago Police Problems; An Approach to Their Solution* (Institute of Public Administration, pp. 48)—Mr. Smith summarizes both the principal recommendations of the survey and the progress that has been made to make them effective. Of equal significance, he reiterates those findings about which little or nothing has been done—a shrewd method of renewing to public and official attention recommendations that might be forgotten. The value of "surveys" is in constant question. Too many of them go to library shelves with little official attention, whatever eventual results they may have by moulding public opinion. It is gratifying to find here and there a report the conclusions of which are so practical and so necessary to public interest that they are respected even in part. It would serve well were every such study followed up with a similar postlogue saying what was done about it and what remains to be done.—LENT D. UPSON.

In view of the widespread demand that something be done about the reorganization of local government, and of the need for basic facts if we are to do anything worth while, Edward Weamer Carter's study, *Manda-*

*tory Expenditures of Local Governments in Pennsylvania* (Philadelphia, pp. 189) is both timely and significant. He surveys the mandatory expenditures of sixty counties (population under 250,000 each), of the city and county of Philadelphia, of forty-three third-class cities (population under 135,000), of 939 boroughs, 1,574 townships, 424 poor districts, and 2,586 school districts. The purposes of the inquiry as stated are: to determine what constitutes a mandatory expense; to find the important sources of such expenses; to determine the percentage of total disbursements so expended; to discover how other states have handled the problem, and to recommend a policy for dealing with it. The important sources of such expenditures include highways, schools, poor relief, salary fixing and salary raising by legislative act. For the three classes of counties studied, an average of fifty-five per cent of the expenditures are mandatory in character, as well as frequently in amount. In Philadelphia, fifty-four per cent are mandatory, while in the other types of units studied, the percentages range from seventeen for second-class townships to ninety for school districts. Because of the number or governmental units involved, the sampling method had to be used. Without attempting to excuse the shortcomings of the local agencies, it is evident that these units are only in part—sometimes a small part—responsible for the excessive cost of local government. While the state legislature has already relaxed the pressure of mandatory expenditures at important points, the author recommends further relaxation by increasing the discretionary powers of local budgeting authorities.—W. BROOKE GRAVES.

Thomas H. Reed has thoroughly revised his *Municipal Government in the United States* (D. Appleton-Century Co., pp. ix, 395), although the general plan of the book has been only slightly altered. The most significant developments of the last six years have been recorded and appraised, and the references include later material. The historical aspects of the subject seem somewhat less conspicuous than before, perhaps because of added material on proportional representation, administrative organization, municipal finance, and the criteria of good government. As those who have followed Professor Reed's activities during recent years might expect, problems of metropolitan government have not been neglected. In collecting the material on this subject in the two concluding chapters, the author has performed a service to all students of this puzzling question. The book is likely to prove even more popular with college classes than in the earlier form, since the field of administration is not avoided as it was before and the controversial subjects of representation and forms of government are discussed with a fair presentation of their many aspects, but without hesitancy to draw the conclusions which experience warrants.

—S. GALE LOWRIE.

*Water Supply Organization in the Chicago Region* (University of Chicago Press, pp. 170), by Max R. White, is a valuable addition to the literature on metropolitan government. The relationship which should exist between the communities in a metropolitan region is yet unsolved. The unsatisfactory condition now existing and the need of improvement in governing such regions are shown by a study of the water-supply systems of the Chicago metropolitan region. Within Cook county, Dr. White finds 76 water systems, and in the Chicago region (defined as the area within 50 miles of the intersection of State and Madison streets in Chicago), 168 water systems. He shows the unfortunate results of this lack of a coördinated system of water-supply, with the duplication of effort, and the lack of coöperation on the part of the communities in the region. The quality of water supplied, the operation of the plants, and the personnel and finances of the water systems are all found to suffer from the present organization. In his concluding chapter, the author considers eight alternatives for reorganizing the water supply of the Chicago region. One chapter is devoted to water-supply systems in metropolitan regions other than that of Chicago.—CHARLES M. KNEIER.

The central thesis of George C. S. Benson's *Financial Control and Integration* (Harper and Brothers, pp. 68) is that in large governmental systems two forms of financial control are needed: internal and external. Evidence in support of this hypothesis is drawn from experience in several American states, from the American national government, and from several foreign governments. The idea is not a new one. It has been advocated ably for many years by the research agencies working in the state and national field in this country. The author performs a useful service, however, by bringing together into a single volume material with reference to foreign as well as American methods of dealing with the problem of financial control. The frequent use of colloquial expressions detracts from the value of the book as a serious study.—HARVEY WALKER.

Compiled by the Document Section of the University of Chicago Libraries, and published for the American Public Welfare Association by the Public Administration Service, *Unemployment Relief Documents* (pp. 18) comprises a full, classified bibliography of source materials—principally official publications and special research reports—on the topics covered. The period dealt with is 1929 to April 1, 1934.

#### FOREIGN AND COMPARATIVE GOVERNMENT

*Dissolution of the British Parliament, 1832-1931* (Columbia University Press, pp. 174), by Chi Kao Wang, is a study of the factors affecting dissolutions of the House of Commons during the last century, with

special reference to the connection with the problem of ministerial responsibility. After a brief historical introduction on dissolutions before 1832, there follow chapters on who dissolved the Parliaments, and why and how Parliaments were dissolved, and one on ministerial resignations and dissolutions. Parliament is formally dissolved by the king; but since 1834 no dissolution has been by the sovereign on his own initiative. Six dissolutions since 1832 have been due directly to votes in the House of Commons, five of these between 1837 and 1886. Since 1800, dissolutions have been generally due to party conditions, or as a means of testing public opinion on the political situation. Of ministerial resignations since 1832, one (1834) was caused by action of the king, five by the death or illness of the prime minister, ten by defects in the House of Commons, thirteen by the outcome of general elections, and seven by party divisions in the cabinet. The study is based on official material (statutes and parliamentary debates and journals), biographies and memoirs, commentaries and treatises, and periodical literature. The work has been done carefully, and will be of value in comparing the workings of the cabinet-parliamentary system in Great Britain and in other countries.—JOHN A. FAIRLIE.

Though overshadowed within the Westerner's field of vision by matters of economic interest, the U.S.S.R. is confronted with no more delicate problems than those arising from nationalism within the far-flung and heterogeneous federation. In his *Nationalism in the Soviet Union* (Columbia University Press, pp. xi, 164), Dr. Hans Kohn, author of a well-known *History of Nationalism in the East* (1929), undertakes an analysis of this phase of Soviet affairs, not through any extended account of ethnology, linguistics, religions, and *mores*, but by inquiring into the Soviet doctrine of nationalism and more briefly into the applications of it thus far made. Formulated by Lenin before the 1917 revolution, the doctrine has undergone substantially no change in later years. Stated briefly, it is that nationalistic aspirations and rivalries are cold realities of the political situation; that they represent a phase or stage just as does capitalistic production; that they can be turned to account in breaking down the capitalist régime; and that, once this has been done, nationalism will lose its importance politically and lend itself, on linguistic and other lines, to a new and richer cultural development. All this is a matter of time—perhaps a good deal of time—for it envisages the overcoming of traditional and deep-seated mistrust and hatred of peoples toward one another. But, in the view of Lenin, Stalin (himself a Georgian by birth), and other leaders generally, it can be made to work out; and the famous Declaration of the Rights of the Peoples of Russia on November 15, 1917, marked the first long step toward the goal. Dr. Kohn's analysis of this

significant body of theory is lucid and his account of the modes of applying it well-informed and illuminating. Some fifty pages of notes and appendices supply useful factual data, in addition to documentary materials.—F. A. O.

In 1921, a young Englishman who already had served the *New York Times* for a period as a European reporter was given the challenging task of keeping the readers of that newspaper—and therefore the most inquisitive and intelligent newspaper clientele in America—informed on the labyrinthine affairs of Soviet Russia. This assignment Mr. Walter Duranty has discharged through all the intervening years in highly acceptable fashion, and students of Russian politics will be glad that in *Duranty Reports Russia* (Viking Press, pp. viii, 401), Gustavus Tuckman, Jr., of New York University, has culled from voluminous despatches and special articles a collection of materials that may be regarded as most permanently useful. Starting with an article suggested by the fifteenth anniversary of the Bolshevik revolution, the volume proceeds through sections devoted to "Russia under Lenin," "Stalinism," and "Collectivization," to a variety of appendices containing contributions of more or less significance that do not properly classify elsewhere. In a modest prefatory note, Mr. Duranty expresses surprise that anyone should have thought it feasible, or worth while, to undertake such a compilation; and he would be the first to concede the limitations of the materials offered. The editor seems, however, to have succeeded unexpectedly well in making a mosaic with a clear central design out of a vast number of isolated but vivid fragments.—F. A. O.

*The Irish Struggle and Its Results* (Longmans, Green and Co., pp. 160), by L. Paul-Dubois, supplements the same author's *Contemporary Ireland*, published in 1907, which has long been known as the best history of Ireland through the years which it covers. The new volume is a worthy companion to the earlier one, and brings the story down through the events of 1926. The author has been a life-long and sympathetic student of Irish history and affairs, and has brought to his study a scholarly detachment and the advantage of a foreign point of view. There being, at the time when he wrote, strong indications of the development of internal unity in Ireland, M. Paul-Dubois was able to end on an optimistic note. Unhappily, the "interior effort" by which "nations, like individuals, are moulded and progress," has since been expended in channels which, in the opinion of many, can lead only to economic and political disaster. Surely the recent history of Ireland would have been more honorable and more promising of final good if the dissident elements of Sinn Fein and the Ulsterites had accepted the Treaty Settlement. M. Paul-Dubois has

no sympathy with those who opposed the Treaty, although he makes no unreasonable demand that it should have been considered a permanent and unalterable arrangement. The blame for the Irish struggle and its results to 1926 is assessed on all sides. A reader who shares the impartiality of the author will feel that the balance has been held even, although some may think that the Liberal government of the early war years is criticized too severely.—JOSEPH R. STARR.

Professor Harold S. Quigley has contributed to the Day and Hour Series of the University of Minnesota a brief but lucid discussion under the title of *Chinese Politics Today* (University of Minnesota Press, pp. 31). The sound judgment is expressed that China should "defer emphasizing the importance of centralization until political and economic maturity develops in the localities and the provinces through experience with local and regional problems."

Persons interested in the recent revival of republicanism in Spain will find intelligent discussion of the backgrounds of contemporary liberalism in that country in J. B. Trend, *The Origins of Modern Spain* (Macmillan Co., pp. 220). The book deals, however, primarily with literary rather than political matters.

#### INTERNATIONAL LAW AND RELATIONS

Ambassador Harry F. Guggenheim's *The United States and Cuba* (Macmillan Co., pp. xiv, 268) is a study of the relations of the republics which does not attempt to review in detail the problems they have had to solve since the period of the Spanish-American War, but seeks to analyze the formal treaty relations which have furnished the background for their connections, along with the conditions which have developed with the passing years and have now brought certain modifications. The Cuban constitution was drawn, the author finds, perhaps too largely on the model of that of the United States to become the fundamental law for a people without political experience. The Platt Amendment and permanent treaty were intended to meet a situation in which the possibility of European intervention in America was much greater than at present. Their provisions were phrased with imperfect knowledge of the conditions to be met and have been interpreted in ways which have lacked consistency and have provoked misunderstanding and friction. The Reciprocity Treaty also was made to meet conditions in the economic development of both Cuba and the United States which no longer exist. This general exposition is followed by chapters detailing the changed outlook brought by later developments and setting forth examples of the difficult alternatives which have arisen in which, apparently, whatever the decision is, it is "wrong." The closing discussions outline a re-

vision of the relationships of these two highly interdependent states, on lines similar to those of the treaty recently made by them. Cuba, writes Mr. Guggenheim, "must work out her own salvation regardless of the mistakes she may make." The Platt Amendment should be recast in the light of present-day conditions. The intervention article, in particular, should be dropped. Intervention should occur only when it "would be justified and pursued under similar circumstances in other countries." A new commercial treaty should stipulate that Cuba will adjust her tariffs so that she will purchase in the United States "whatever cannot be economically produced on the island." In return, Cuba should be granted a "fair quota of the United States sugar consumption." Both these changes are to be made only on "the reestablishment of truly representative government in Cuba." Some readers will be less optimistic than the author as to the degree to which the proposed changes will solve the problem of the relationship of Cuba and the United States. Cubans have welcomed abandonment of the "intervention" article, but the step which many of them, like many in other Latin American countries, would like to see taken is the unconditional renunciation of the right of intervention under all circumstances. If Cuba is to abandon protection as to articles which she cannot economically produce, why should not the United States adopt the same measure as to sugar? Finally, if the changes are conditioned on the reestablishment of truly representative government, can assurance be given that such government, once reestablished, will continue?—CHESTER LLOYD JONES.

A brief sketch of the similarities and contrasts found in the American republics is Stephen Duggan's *The Two Americas* (Scribner's, pp. xiv, 277). The author gives a frank statement of the limitations of both Latin American and Anglo-American civilizations which leaves the reader with a better appreciation of the factual background than it is possible to secure from many works which attempt to promote "better understanding" by glossing over statements of defects which may offend national susceptibilities. Natural resources in Latin America are specialized and limited in number; the basis for great industrial development does not exist. Racial problems are still unsolved; social advance is backward. The United States attitude toward Latin America is pragmatic, sometimes inconsistent, and at least until recently characterized by meddling. The author believes the character of United States diplomatic and business representatives to have been unfortunate, and that the press has been guilty of misrepresentations. Better understanding, he feels, can best be promoted by emphasis of cultural contacts. So brief a sketch must lack the detail which can give the reader the basis for an individual judgment, but the book is nevertheless a stimulating outline

of the basic factors on which the relations of the two Americas rest.—  
CHESTER LLOYD JONES.

In his *Deutschland und die Vereinigten Staaten von Amerika im Zeitalter Bismarcks* (Walter de Gruyter, Berlin and Leipzig, pp. 368), Dr. Otto Graf zu Stolberg-Wernigerode has written an excellent study of a phase of nineteenth-century diplomatic history not hitherto extensively explored: the relations between Germany and the United States from 1860 to 1890. The study was inspired, the author admits, by his own astonishment at the entrance of the United States into the Great War on the side of the Allies and by the astonishment and chagrin of Germans generally at the consequences thereof. The volume represents a most commendable and scholarly effort on the part of the author to relieve the ignorance of his fellow-countrymen with regard to at least one period of German-American relations. It is, moreover, an authoritative and well-written study, thoroughly documented, based upon both German and American sources, and, fortunately for its scholarly qualities, untainted by the Nazi *Weltanschauung*. Part I, "Der Weg zur nationalen Einheit," reviews early diplomatic contacts between the two countries and examines these contacts in detail during the American Civil War and the German wars of national unification. Part II, "Der Weg zur Weltmacht," throws new light on German-American business diplomacy in the 1880's, on emigration problems, and on the acute and dramatic conflicts between Washington and Berlin in the South Pacific, particularly over Samoa. Dr. Stolberg-Wernigerode strikes a nice balance between the rôles of Germany and the United States in specific controversies, although he perhaps over-emphasizes slightly the factors making for friction rather than those making for harmony. An appendix of highly interesting diplomatic documents and an unusually rich bibliography add materially to the value of the book. One may well hope that the author will continue his work into the period since 1890 when both states, almost simultaneously, became "world powers" and came into even more intimate contacts and conflicts than before.—FREDERICK L. SCHUMAN.

Quantitatively, *Sociology and the Study of International Relations* (Washington University Studies, pp. 115), by L. L. Bernard and Jessie Bernard, shows that extra-national topics have been chosen for about fifteen per cent of the articles, research projects, and theses in sociology in recent years. The sociologist is concerned primarily with the relations of humanity, and when he examines "international relations" he does not confine himself to those matters which constitute the substance of formal action, as the political scientist probably would. Immigration, comparative cultures, "Americanism," nationalism, and other subjects

involving inter-group opinion are viewed on a par with war, peace, international organization, and "imperialism." The authors, however, do make a case for their contention that sociological concepts and methods are of value when used for extracting data on questions of indubitable international character. They persuasively list sixteen methods or principles and fifteen fields of coöperation where sociology can or does fit in. In two chapters on war and peace, the contribution of sociologists to the evaluation of those central problems of international relations are summarized. The items in the present indictment against war are largely in the terms of the sociological writers. As to peace, they are more diffuse, being concentrated more on the elements of social restlessness than on the development of institutions. The little volume expands a survey made for the Social Science Research Council.—DENYS P. MYERS.

Chester W. Clark's *Franz Joseph and Bismarck; The Diplomacy of Austria Before the War of 1866* (Harvard University Press, pp. xvi, 635) is true to its sub-title in that it actually constitutes not only a review of the diplomatic relations of Prussia and Austria during the period indicated, but also a very thorough study of the personal and political forces which influenced the formulation of Austrian policy. It is also true to its more challenging first title in that it stresses, throughout, the dominating influence of Bismarck in the making and direction of Prussian policy, while developing the thesis that Austrian foreign policy during that period was actually Franz Joseph's own to a greater extent than most of the previous writers on the subject have seemed to suppose. The book is Number 36 of the Harvard Historical Studies, and is a fitting successor to Lawrence D. Steefel's *The Schleswig-Holstein Question* (Number 37), overlapping it to a certain extent but supplementing it at many important points. By his extensive use of the Austrian archives, as well as those in Berlin and other capitals, Professor Clark has secured for his book a broader documentary basis than the works of Sybel and Brandenburg (for example) could have; and writing with the objectivity of a neutral and the accuracy and restraint of the careful historian, he has no need to apologize for having reopened an old question. In fact, he seems to take a certain pleasure in correcting the inaccuracies of Sybel, whom he accuses of having "deliberately altered his sources to conform to his literary aims and nationalistic purpose." Nineteen significant documents fill an appendix of fifty-three pages; and an extensive critical bibliography also contributes to the value of the book for the student of diplomatic history.—CHESTER V. EASUM.

In *The World Court 1921-1934; A Handbook of the Permanent Court of International Justice* (4th ed., World Peace Foundation, pp. 347), Profes-

sor Manley O. Hudson has brought his handbook of the Permanent Court of International Justice down to 1934. The new edition is done in Professor Hudson's usual thorough style, and is without doubt the most handy reference book to be found concerning the Court. In some 300 pages, the author presents a history of the Court (pp. 1-9); its chronology through the 30th session; lists of the Court's members; a summary of all judgments, orders, and advisory opinions issued, through the cases of the Peter Pázmány University in the one series and employment of women at night in the other (pp. 14-145); a list of signatures and ratifications to the various instruments concerning the Court; the instruments themselves (pp. 154-215); an explanation of the publications of the Court; and in the final part, the documents dealing with the effort to secure ratification by the United States. Citations are given to pertinent documents; the footnotes contain also much explanatory material. The summaries of judgments and opinions are clear and concise, illustrating many interesting points of international law and organization. The reviewer wonders if a future edition could not be made to show briefly the wide compulsory jurisdiction of the Court. Incidentally, the index does not contain the word "jurisdiction." The book is an excellent and useful one. It should be in the hands of every student of international law or organization, and study of it should be urged upon the members of all organizations interested in the pacific settlement of international disputes.—CLYDE EAGLETON.

Ten years ago, Professor Charles G. Fenwick published the first edition of his *International Law*. The second edition (D. Appleton-Century Company, pp. xlviii, 623) has now appeared. It numbers twenty pages less in size. Through condensations, restatements, and additions, the material has been wholly revised. A new chapter on the League of Nations has been added; likewise one on international coöperation for the promotion of social and economic interests. Pertinent references to cases, events, and publications of the last ten years have been included. Some lawyers may not classify this book as law. Nevertheless, it applies legal principles to intercourse between nations. News reporters, foreign service officers, students of history and government will find in the book valuable information presented in an interesting and authoritative manner. The author's confession that Professor Lauterpacht has convinced him that "the 'consent theory' is not only defective as the basis of a system of law but is inadequate to explain the facts of international relations" need not disturb the followers of Grotius. The same objectives can be reached by means of an approach through the consent theory with proper modifications. Professor Fenwick might well have emphasized to a greater extent that international law is the supreme law for the members of the

society of nations. Even the acts of officers and of official bodies of a government must square with international law. —CHARLES E. HILL.

In 1930, Casimir Smogorzewski published a little volume entitled *Poland, Germany, and the Corridor*. The book has now been expanded into a substantial volume entitled *Poland's Access to the Sea* (London: George Allen and Unwin, pp. 468). Like the earlier book, the present one is frankly a reply to "the flood of German propagandist writings which deal with the subject of the Corridor in a tendentious fashion," and it argues not only that the old maritime province of Primorze is historically Polish territory, but that the turning over of the area to the Poland of today was an inevitable implication of the decision of the victorious Powers in 1919 to recognize and uphold the new Republic. The "arguments (so-called) of that German pseudo-science which calls itself *Geopolitik*" are refuted at length—though one beholds the author later on blandly turning to account something very similar to *Geopolitik* in developing his case for the existing arrangements. The conclusion inevitably is that "there can be no revision of frontiers at the expense of Poland, for Poland has both right and justice on her side." One can at least find in the volume, in orderly array, every argument, citation, and allusion that can possibly be employed in building up the Polish case in an unfortunate dispute.

Students of international relations in Central Europe will find use for a study by Richard Hartshorne entitled *Geographic and Political Boundaries in Upper Silesia*, reprinted from the *Annals of the Association of American Geographers* (pp. 195-228). Extensive field work on the subject was carried on by the author when a Social Science Research Council fellow in 1931-32.

#### POLITICAL THEORY AND MISCELLANEOUS

Another invaluable book, *Social Work and the Courts* (University of Chicago Press, pp. 610), intended primarily for social workers, has been written by Dr. Sophonisba P. Breckinridge, of the School of Social Service Administration at the University of Chicago. *Social Work and the Courts* follows *The Family and the State* (1934) and *Public Welfare Administration* (1927), and the three books are titles in the University of Chicago Social Service Series. This series, together with special monographs and the journal *Social Service Review*, constitute the most important material yet published on the interrelationships of public welfare administration, the law, and social work. In her Introduction, Miss Breckinridge says that the documents are intended to introduce the student to the question

of judicial organization as it affects the task of the social worker. In a few pages she gives the social worker, unacquainted with the law, some elementary definitions and concepts. The first half of the book contains documents on the relation of the judicial to the executive and legislative departments, special problems including the questions of privileged communications and conflict of laws, causes of dissatisfaction with the law, reorganization of the judicial structure as provided by the British Judicature Act, the unified court movement in the United States, the juvenile court movement, etc. The last half of the book is concerned with criminal administration, including methods of punishment, treatment of the woman offender, the office of the United States Attorney-General and the federal offender, and the age of criminal responsibility. There is an excellent bibliography; also a series of questions to guide discussions.—HELEN I. CLARKE.

*Japanese in California* (Stanford University Press, pp. 184), by Edward K. Strong, Jr., is the second of four studies conducted from Stanford University, under a grant from the Carnegie Corporation, on the matter of "educational and occupational opportunities offered to American citizens of Oriental races." The stated object of the present study is "to present the facts regarding the Japanese as they were living in California in 1930," and a great mass of carefully compiled data concerning birth-places, age, sex, size of families, births, deaths, education, occupations, land ownership, religious affiliations, vocational ambitions, and other matters, is set forth. The data were gathered largely by personal interviews with 9,416 men, women, and children of Japanese ancestry living in California and constituting ten per cent of the Japanese population of the state, who in turn make up 70.2 per cent of the total Japanese population of the entire country. The book is taken up largely with tabulated facts presented in sixty-eight tables, numerous graphs, and other arranged data. While some of the facts may seem of dubious value, the study does present much useful information in a field in which adequate and dependable information was not previously available. Most aspects of the work seem to have little definite political or governmental significance, but its general social import and its interesting presentation make it valuable both to the general reader and to the student of social science.—N. D. HOUGHTON.

*Loose Leaves From a Busy Life* (Macmillan Co., pp. viii, 239), by Morris Hillquit, is an autobiographical memoir having value for the student of American politics for several reasons. The most interesting and too brief account of the life of young immigrants—of the "new immigration"—in the East Side of New York is an indispensable supplement to our sources

of knowledge of how political ideas and movements are formed. We have many descriptions of the life of the Irish-American urban communities, or the older rural and frontier political nurseries. The fusion of transplanted North- and East-European political radicalism with American institutions and practises has a great importance for the politics of 1900-30, and has been too little reported by participants. It is arresting that Hillquit, a product of this fusion, was one of the most valiant fighters for supposed American constitutional principles in the courts and before the electorate during and after the World War. The account of the labor movement among Jewish workers is similarly valuable; while we have here also an appraisal of the American Socialist movement by one who was an active participant from the early days in which it was an almost wholly imported affair whose members strove to make it "American," down through the participation in the LaFollette campaign in 1924 and the two most recent campaigns. The reader leaves the book with great respect for its author, and with the view that despite its relatively brief treatment of important events and persons, it is a valuable aid to an understanding of contemporary America.—JOHN M. GAUS.

With the aid of funds supplied by the Falk Foundation of Pittsburgh, the Institute of Economics of the Brookings Institution has undertaken an ambitious research project under the general title of "The Distribution of Wealth and Income in Relation to Economic Progress." The findings are to be published in four volumes, of which the first, *America's Capacity to Produce* (Brookings Institution, pp. xiii, 608), by Edwin G. Nourse and associates, has now appeared. Later volumes will deal with "America's Capacity to Consume," "The Formation of Capital," and "Income and Economic Progress." In the volume now available, the collaborators consider the production system of the United States realistically as a technological process, with a view to ascertaining the general trend of capital expansion in the country and the capacity of our productive plant and labor supply to produce the goods and services which society requires. This leads them to survey first raw materials, then the processes of fabrication, and finally services such as utilities, transportation, money and credit, and the labor force; and appendices present the methods used, along with various supplementary data. Conclusions are stated serially throughout the volume, after given topics have been discussed, rather than assembled in final chapters; and this renders it somewhat difficult to get a clear idea of the ultimate results. In justice, it must be recalled, however, that the work of synthesis remains to be performed as the later volumes take shape. Meanwhile, the present study meets the highest standards of creative scholarship.—F. A. O.

*European Civilization and Politics Since 1815* (Harcourt, Brace, and Co., pp. xxiii, 879), by Erik Achorn, is something more than the usual sort of textbook on Europe in the last hundred years. Indeed, it may not have been planned as a textbook at all. In any event, it represents a remarkably successful attempt to write European history not only in a highly readable manner but on the lines of the "new history" developed in Germany by Lamprecht and in our own country by James Harvey Robinson. The two terms employed in the title, "civilization" and "politics," afford a very good clue to the contents of the book. Cultural history, broadly construed, is emphasized; politics, domestic and international, is kept constantly in the picture. Other features include excellent maps, several useful appendices, and a fifty-page classified though not annotated bibliography. A chart showing the interrelations of the Soviet government, the Communist party, and the Third International is the most ingenious and complete that the writer has seen.—F. A. O.

A revised American edition of *The Case for Socialism* (Chicago: Socialist Party National Headquarters, pp. 146), by Fred Henderson, is based on the latest revision of a book published in England, and differs from it only in that American equivalents are substituted for various British allusions and comparisons. Having been adopted by the British Labor party as the official textbook for its study classes, the work may readily be accepted as an authoritative exposition of Socialist doctrine. As such, it has been in wide use in this country for a number of years.

## THE TEACHING PERSONNEL IN AMERICAN POLITICAL SCIENCE DEPARTMENTS

A REPORT OF THE SUB-COMMITTEE ON PERSONNEL OF THE COMMITTEE ON POLICY TO THE AMERICAN POLITICAL SCIENCE ASSOCIATION, 1934

### PERSONNEL IN POLITICAL SCIENCE: A FOREWORD

The Sub-committee on Personnel of the Committee on Policy of the American Political Science Association has the function of considering and reporting on problems relating to the selection, training, and employment of men and women whose training is primarily in the field of political science, and the study of political science in the education of those to whom it should be an essential part of a training program. The fields of possible employment would seem to be the following:

1. Teaching political science in (a) universities, (b) four-year colleges, (c) junior colleges, (d) normal schools and teachers colleges separate from universities, (e) secondary schools, and (f) other institutions.
2. Research work in connection with (a) universities and other institutions of learning, (b) government departments, (c) institutes and bureaus of government research outside universities; (d) political parties, farmers organizations, trade unions, chambers of commerce, taxpayers' associations, and similar interest groups.
3. Public service such as (a) general public administration, (b) technical staff services (personnel, finance, etc.), (c) professional line services (foreign service, engineering, etc.), (d) legislative drafting and reference service.
4. Supplementary public services in connection with (a) leagues of municipalities and associations of public officials, (b) voters' leagues, such as the League of Women Voters, municipal voters leagues, etc., (c) trade association secretariats.
5. Political journalism, reporting, editorial writing, and publicity work.
6. Elective public office and party service.

The following report, which covers only the first of these fields, and particularly the first parts of it, was prepared by Professor William Anderson, of the University of Minnesota, with the assistance of Miss Myrtle Eklund. It is planned that other phases of the problem of the committee will be dealt with in later reports.

Information concerning the historical development of the study of political science in the various institutions of the country supplementary to that collected by Professor Anderson is greatly desired by the Committee, which is endeavoring to secure such data for the records of the

Association. Members of the Association are invited to coöperate by supplying information, which will be greatly appreciated.

JOHN M. GAUS, *Chairman.*

#### I. INCREASE IN NUMBER OF TEACHERS OF POLITICAL SCIENCE IN COLLEGES AND UNIVERSITIES

It is reported that the Harvard College curriculum of 1643 provided for instruction in politics, along with ethics, moral philosophy, and history. In the eighteenth century, several American colleges were apparently giving some attention to political science, under one name or another, and after the adoption of the federal constitution, the interest in the subject seems to have shown some increase. In 1825, Jefferson and Madison planned a course of readings in politics for the University of Virginia. It is generally agreed, however, that the beginnings of political science in American institutions of higher learning were very small in the first two centuries after the founding of Harvard College. Apparently there was no professor of political science under that title in any American college, although some phases of the subject were taught by professors concerned mainly with other subjects.<sup>1</sup>

Francis Lieber, who came to the United States in 1827, and who taught first at South Carolina College (1835-56), and later at Columbia College (Columbia University), is by general agreement one of the first American college teachers who can be classed as a professor of political science.<sup>2</sup> Even he did not give full time to the subject, nor did he have the title of professor of political science; and he ended his teaching career in the Columbia law school. Nevertheless, from his day, in the middle of the nineteenth century, we can sense a continuous development of political science as a college subject. There are evidences of small beginnings in a number of places.

Lieber died in 1872. In 1876, John W. Burgess went to Columbia as Lieber's successor. There he soon founded the first graduate school of political science in the United States, and built up the faculty which has prepared more men for the teaching of political science in American colleges and universities than any other institution.<sup>3</sup> Johns Hopkins, Har-

<sup>1</sup> Professor L. L. Bernard has gathered some materials on the early history of political science in the United States into his article on the social sciences as a discipline in the United States in the *Encyclopedia of the Social Sciences*, Vol. I, pp. 324-349.

<sup>2</sup> On Lieber, see especially Lewis R. Harley, *Francis Lieber; His Life and Political Philosophy* (N. Y., Columbia Univ. Press, 1899).

<sup>3</sup> On Burgess and his work, see *Reminiscences of an American Scholar: The Beginnings of Columbia University*, by John W. Burgess, with a foreword by Nicholas Murray Butler (N. Y., Columbia Univ. Press, 1934); and *A History of Columbia*

vard, Pennsylvania, Michigan, Chicago, and Wisconsin, among others, soon followed Columbia in the creation of departments of political science and in the development of graduate work in this field. Chairs of political science were soon established in many other institutions. As we look back from the vantage point of 1934, it would seem that the short span of the past fifty or sixty years has seen almost the whole growth and flowering of the subject in American colleges and universities.

To the men of forty and fifty years ago it seemed a very difficult task to get political science adequately recognized in the college curricula of the day. There were vested academic interests which claimed the time and thought of the students, and which seemed very slow to yield to such upstart studies. As we look back upon the developments, however, and particularly as we compare the rapidity with which political science came to be recognized in this country as contrasted with the slowness of its progress at Oxford and Cambridge in England, we see the movement in an entirely different light. American colleges now seem to have been quick and generous to accept the new study and to give it a status as a separate department of instruction.

It is hard to get reliable data on the rapidity of the advance of the subject. The Committee on Instruction of the American Political Science Association appointed in 1911 reported in 1916 its conclusion that there was inadequate provision for the teaching of government at that time in American colleges and universities.<sup>4</sup> They reported the numbers of courses offered at the time, but not the numbers of teachers.

In 1930, Professor W. B. Munro, chairman of the Sub-committee on Instruction, reported to the Committee on Policy the following figures from about 200 of the leading American colleges and universities.<sup>5</sup>

TABLE I. TEACHERS OF POLITICAL SCIENCE IN 1929-30

Rank	Full Time	Part Time	Total
Professor	164	149	313
Associate Professor	58	28	86
Assistant Professor	84	44	128
Instructor	85	46	131
Lecturer	13	26	39
<hr/>	<hr/>	<hr/>	<hr/>
Total	404	293	697

*University, 1754-1904* (N. Y., Columbia Univ. Press, 1904), espec. pp. 222-229, 267-305.

<sup>4</sup> Charles Grove Haines et al., *The Teaching of Government; Report to the American Political Science Association by the Committee on Instruction* (N. Y., The Macmillan Co., 1916).

<sup>5</sup> *Report of the Committee on Policy of the American Political Science Association*, published as a supplement to this REVIEW, Vol. XXIV (1930).

Some light on the problem of the rapidity of increase in the number of political science teachers can be obtained by a study of the published lists of subscribers to the AMERICAN POLITICAL SCIENCE REVIEW. The REVIEW began publication in 1906. It increased rapidly in number of subscribers until about 1912, when the rate of increase slowed down greatly. During the World War and for a year or two thereafter, the number declined. Thereafter the number increased again year by year until 1929, when it reached its highest point to date.

On the basis of the lists of 1912 and 1932,<sup>6</sup> we have made certain comparisons which we present in the following table:

TABLE II. COMPARISON OF 1912 AND 1932 SUBSCRIBERS TO AMERICAN POLITICAL SCIENCE REVIEW

(Within the United States)

	1912	Per Cent	1932	Per Cent
Professors and Teachers	267	20.0	580	34.4
Lawyers, Businessmen, etc.	419	31.3	90	5.3
Unclassified Individuals	494	36.9	451	26.7
 Total Individuals	 1180	 88.2	 1121	 66.4
 Libraries and Other Institutional Subscribers	 —	 —	 —	 —
	156	11.6	565	33.5
Total	1336	—	1686	—

We need not here discuss the difficulties involved in making such a table as this, or the probabilities of error in it. If it is substantially reliable as an indication of major trends, it indicates a large increase in numbers of college and university professors and other teachers of political science between 1912 and 1932. The number of such subscribers more than doubled in the twenty-year period, rising from about 267 to about 580. If we assume that practically all full-time teachers of political science and a number of part-time teachers of the subject subscribe to the REVIEW, we have in the figures given above some indications of the growth in numbers since 1912.

How much of this increase came in the last ten years? Returns received by us from 39 leading departments which answered our query in 1932-33 indicated an increase in political science teaching positions in the previous decade from 133 to 230—an increase of 97 positions, or about 73 per cent, in a single decade. A part of this increase seems to have been due to reclassification, as political science separated from some other

<sup>6</sup> The list for 1912 is printed in a supplement to this REVIEW, Vol. VII (1913). Recent lists have been mimeographed by the secretary-treasurer of the Association.

department and became independent. We doubt also whether there was any such rate of increase in the smaller colleges. An increase of about 55 to 60 per cent in political science teachers in this decade is a more conservative estimate, but is not to be taken as anything more than an estimate. The actual figures are not available, and too much research is needed to procure them.

Assuming 60 per cent to be somewhere near the right figure for this decade, it is interesting to note that it is much less than the increase in collegiate enrollments for the decade 1920-30. In that decade, total college enrollments practically doubled.<sup>7</sup> This meant, on the one hand, that college classes were, on the average, becoming larger. On the other hand, it also appears that other departments, such as departments of sociology and schools of business, were growing faster in many places than political science, and were drawing relatively more students into their classes.

To sum up: from such indications as we have, and they are fragmentary and not wholly satisfactory, political science as a college subject made rapid headway after 1900 and down to the American participation in the World War. During that period a number of important political science departments separated from old alliances with history, economics, and other disciplines, obtained an independent position in the college curriculum, attracted their own student followings, and proceeded to develop and round out their courses of study to something like the present richness and variety. The World War and the short post-war depression temporarily slowed up their growth, but by 1922 they were again growing rapidly in the larger institutions and becoming established in smaller ones. This went on until about 1930. The recent depression has again resulted in a cessation of growth, and even in some actual declines in political science staffs in certain places.

## II. PRESENT NUMBERS OF TEACHERS OF POLITICAL SCIENCE IN COLLEGES AND UNIVERSITIES

What is then the present situation as to numbers? Returns from 34 of the larger and better known institutions in 1932-33 showed 252 members of political science faculties. At the same time these institutions reported enrollments of all kinds, including extension students, of over 265,000. The ratio is slightly more than one thousand students to one teacher of political science. Institutions where tutorial and preceptorial methods of instruction are used, such as Harvard and Princeton, showed the highest ratios of instructors in political science to students enrolled. At Princeton, it was better than one political science teacher to 200

<sup>7</sup> U. S. Bureau of the Census, *1932 Statistical Abstract*, p. 102.

students. On the other hand, in several institutions there were more than 2,000 students enrolled in all departments to one teacher of political science.

If the ratio of one teacher of political science to 1,000 collegiate students enrolled held for the entire country, there would be over 1,000 college and university teachers of the subject throughout the country. As a matter of fact, we do not think the ratio holds, for the reason that our sample is not representative. It includes no colleges for women, no important Southern colleges or universities, no Catholic institutions, no teachers colleges, no exclusively technical schools, no junior colleges, and only a few of the smaller four-year arts colleges. In practically all of these types of institutions, it would appear that the proportionate emphasis on political science is less than it is in our sample.<sup>8</sup> In each of them there is likely to be one or more teachers who give a course or two in political science, but with some exceptions this is likely to be a minor interest, and for that reason we cannot class many of these persons definitely as political science teachers. A number of them are probably included as "part time" teachers of political science in Table 1 above. Their training and major interest is likely to be in history, economics, sociology, or some other field, and their professional connections not primarily with political scientists.

To conclude, then, if every person who teaches one or more political science courses in American colleges and universities is counted as a teacher of the subject, the number will probably go well above 1000. If one takes a stricter view and classifies as teachers of the subject only those whose major interest and training are in the field, and who give most of their teaching time to this subject, the number becomes considerably less. Possibly there would not be over 600, and very probably not over 700.

This conclusion can be checked from another angle. Presumably most of the full-time teachers of political science are subscribers to the REVIEW. The number of subscribers reached a peak in 1929, and in 1932 was only about one-half of one per cent under the number for 1929. From the official list of subscribers issued in July, 1932, we have concluded that only about 580 can be positively identified as college and university teachers.

There was naturally very little information upon which to base this classification. No doubt a considerable number of those in the large unclassified group (451) are teachers of political science, many of them perhaps full-time teachers, although we know that most of those in the list are graduate students (including teaching assistants), research bureau workers, authors, lecturers, editors, public officials, etc. Even if as

<sup>8</sup> On teachers colleges and engineering schools, see *Report of the Committee on Policy of the American Political Science Association*, cited above, pp. 146-168.

many as 100 should be lifted out of this group and placed in the teacher group, this transfer would be offset by the fact that in the latter group are many teachers of history, law, economics, sociology, and journalism who in a strict classification of political science teachers would be omitted.

When compared with other groups of teachers in the social sciences, the number of political science teachers appears small. There can be no doubt that at the present time, taking the country as a whole, collegiate departments of history and economics include many more teachers than do the departments of political science. This fact can be tested by a study of college and university bulletins, and is corroborated also by the larger memberships of the professional societies in those fields and by the longer lists of subscribers to their professional journals.<sup>9</sup>

If the comparison is made with non-social-science departments, the relative smallness of the political science group becomes still more noticeable. English and modern languages, mathematics and chemistry, and the more important professional schools like medicine and law, usually far outnumber political science departments in the same institutions in their staffs of teachers. In fact, the college and university teachers of political science are less than one per cent of the 71,722 college and university teachers (not including those in teachers colleges) enumerated by the Bureau of the Census in 1930.<sup>10</sup>

Whether the number of college and university teachers of political science is too large or too small, no one is in a position to say. For the Association it is important to note, however, that the teaching group has come to be numerically the most important among its individual members. It will be noticed in Table II that in 1912 the number of lawyers and business men subscribing to the REVIEW, and also the number of unclassified individual subscribers, greatly exceeded the professor and teacher group. From the beginning, the teaching group dominated the annual meetings and filled the pages of the REVIEW, but there was a very large fringe of others who helped to support the Association, and to whose needs the REVIEW and the *Proceedings* attempted in some degree to cater. In fact, most of these early subscribers have dropped out, and their places have not been taken by others of like professions or vocations.

The group of "unclassified individual" subscribers includes today a considerable group of graduate students and teaching assistants whose long-run interests are the same as those of the professors. There are also a number of workers in research bureaus and institutes whose interests are in considerable part the same. In addition to these two sub-groups

<sup>9</sup> In association memberships, the difference is considerable. The American Historical Association reports 3,336 and the American Economic Association 3,627 members. *World Almanac*, 1934, pp. 421, 422.

<sup>10</sup> U. S. Bureau of the Census, *1932 Statistical Abstract*, p. 104.

are a number of editors, lecturers, writers, public officials, civic league secretaries, and public spirited citizens of many different vocations and interests. Some of these will probably always wish to subscribe to the REVIEW, but it is unlikely that their wishes and interests will dominate the policies of the Association or determine the nature and the contents of the REVIEW.

In short, the developments of the past twenty or thirty years have made the Association more fully than ever a professional academic society, composed essentially of professors and other teachers of political science, research workers in the same field, and a considerable number of men in graduate schools training for teaching and research positions. Unless there should be a great change in its policies and work, it is doubtful whether large numbers of lawyers, public officials, and business-men will ever again be found in the Association's membership.

### III. DISTRIBUTION OF POLITICAL SCIENCE TEACHERS

If we take the 580 professors and other teachers of political science who subscribe to the REVIEW as our basis for calculation, we find substantial differences in their distribution, between the different sections of the country, as shown in the following table:

TABLE III. RATIO OF TEACHERS OF POLITICAL SCIENCE TO POPULATION AND COLLEGE STUDENTS BY GEOGRAPHICAL REGIONS

Groups of States	Teachers Subscribing to REVIEW	Students in Colleges and Universities per Teacher of Political Science	Population of Region per Teacher of Political Science
1. <i>Northeastern States</i> (Me., N.H., Vt., Mass., R.I., Conn., N.Y., Pa., N.J., Del., D.C., and Md.)	230	1332	159,900
2. <i>Middle Western States</i> (O., Ind., Mich., Ill., Wis., Iowa, Minn., N.D., S.D., Neb., Mo., and Kan.)	202	1,547	190,100
3. <i>Mountain and Pacific Coast States</i> (Mont., Wyo., Colo., N.M., Idaho, Utah, Nev., Ariz., Wash., Ore., and Calif.)	64	1,727	185,800
4. <i>Southern States</i> (Va., W.Va., N.C., S.C., Ga., Fla., Ky., Tenn., Ala., Miss., La., Okla., Ark., and Tex.)	84	2,212	410,500
Total	580	1,578	209,600

The Northeastern group of states clearly leads, and the Southern states are just as clearly at the bottom of the list with respect to the number of teachers of political science in proportion to college enrollments and to total population.

When types of institutions are considered, the large private colleges and universities clearly have the largest numbers of political science teachers in proportion to students. The state universities as a group are a fairly close second. These two types of institutions together have most of the collegiate political science teachers of the country.

#### IV. THE TRAINING OF PROFESSORS OF POLITICAL SCIENCE

What has been the training of our professors of political science, and what trends can we discern with respect to training? In an attempt to answer these questions, we have made some analysis of two distinct groups. The first consists of 86 leading political scientists whose records are summarized in *Who's Who* (1932-33). These may be taken as representative of the older group in the profession. The second group is composed of 80 younger men who had just taken their Ph. D. degrees, or were just about to take them, and whose records are given in brief form in the "List of Persons Available for College and University Appointments in Political Science, 1933-34," issued by this Sub-committee in January, 1933. Many of these men have not yet been placed in teaching positions. A few of them have not yet obtained, and probably some will not obtain, the Ph.D. degree.

It must be remembered that the recent group includes only persons whose names were included in the 1933 placement list. Some graduate schools did not send the names of all recent Ph.D.'s or current candidates for the doctorate, and some men, having already found positions, did not wish to have their names listed. Furthermore, candidates for political science teaching positions who were approaching the profession by some other route than through the Ph.D. gateway were not included in the list. For these and other reasons, the sample is not wholly representative.

Despite these and other qualifications respecting the samples chosen, the trends are too clear not to be perceived by all. First, there has been a great increase in numbers. The new doctors in political science of a recent two to three year period have equalled or exceeded in number all the professors of political science listed in *Who's Who*—a group representing a large part of the Ph.D.'s for nearly a generation. Second, the small colleges have been displaced by the state universities as leaders in turning young men to graduate work in political science, while the larger private institutions have about held their own. Third, there has been no change in the number of institutions granting bachelor's degrees to men who proceeded toward graduate work in political science.

The more important differences between these two groups are summarized in the following table:

TABLE IV. COMPARISON OF 86 POLITICAL SCIENCE PROFESSORS IN WHO'S WHO WITH 80 RECENT PH.D.'S AND NEAR-PH.D.'S IN POLITICAL SCIENCE

	Who's Who Group	Recent Group
Total Number	86	80
No. having A.B. degree or equivalent	86	80
A.B. or equiv. from small colleges	30	18
A.B. or equiv. from state univs.	18	31
A.B. or equiv. from large private colleges and universities	29	26
A.B. or equiv. from miscellaneous institutions	9	5
No. of institutions represented	52	52
Largest number having bachelors degrees from any institution	6 (Harvard)	5 (Ohio State)
No. having Ph.D. or equivalent	73	29 have degree (all others candidates in 1933)
Ph.D. degrees or equivalent from foreign university	6	2
Total from Chicago, Columbia, Cornell, Harvard, Johns Hopkins, Pennsylvania, Princeton	55	36
Total from state universities	8 (Wis. 5)	34
No. of American institutions represented in granting of these Ph.D. degrees	13	23
No. of foreign institutions represented in granting of these Ph.D. degrees	6	2
Largest no. from one American institution	23 (Columbia)	9 (Iowa)

As to the Ph.D., even in the older group nearly all had this degree or its equivalent, whereas in the recent group all either had it or were on the way toward it. With respect to foreign study, however, there is an even greater difference than is shown by the figures. In the older group, a fairly large number had studied in foreign institutions, usually in Germany, for a year or more. Six have foreign degrees, of which three are German Ph.D.'s, two are French *Drs. en Droit*, and one a recent English (Oxford) Ph.D. In the recent group, only two have foreign Ph.D.'s—one from London and one from Brussels. The old tradition of study in Germany for a mastery of political science has passed. Some young men interested in international law and relations have studied at Geneva, and a few elsewhere, but their degrees are practically all American.

Within the country, the rise of the graduate schools in state universities is clearly reflected in the increased number of institutions conferring Ph.D. degrees in political science, and by the increased proportion of recent Ph.D.s coming from these institutions.

To study abroad, men have to sever home ties for a period, learn to follow lectures and even to speak in a foreign language, and become ac-

quainted with new professors, new ideas, and new institutions. The broadening and deepening effect upon students of such migrations in search of new knowledge have always been deemed of great importance. The new tendency to do nearly all our graduate studying at home is a departure from an old and honored tradition. It is caused in part, of course, by the great improvement and the wide spread of graduate study in political science in American universities. European institutions probably have relatively less to contribute to us now than previously. Economic difficulties, the World War, the decline in the study of German during and after the war, and other factors can also be adduced in partial explanation of the new trend.

If migrations to foreign countries for graduate study have become relatively less common, migration from institution to institution has certainly not increased. Only 10 of the 73 Ph.D.'s. in the *Who's Who* list took both their bachelor's and doctor's degrees at the same American institution. In the list of 80 recent doctors and candidates for the doctorate, 23 had their bachelor's degree and either had or expected to get their doctor's degree from the same university. In one institution the ratio was over fifty per cent. This trend is one which is generally deplored by the deans of graduate schools and others interested in graduate study, but of course many graduate students feel that they cannot afford to travel, and there are other factors which can be cited to explain the new trend. To justify it would be difficult.

#### V. INITIAL SELECTION OF POLITICAL SCIENTISTS

At some point in their careers most men make decisions to follow a particular profession or vocation. What qualities latent in the mind or inherent in the environmental conditions determine the time and the nature of these decisions? Why do certain young men choose to go into political science, while others are deciding on law, medicine, and business as fields for their careers? To such questions there is no present answer, although a number of answers have been suggested.

1. Some of the suggested answers are in terms of psychology. Each man's mind develops a certain "set," it is "interested" in certain things and not in others, and it shows aptitudes along definite lines. Some tests of such interests and aptitudes have been developed for certain broad fields, such as law, and on the basis of their achievements in the tests young men are advised to follow certain lines and to eschew others.<sup>11</sup> Of course such predictive devices have not yet been refined to the point where they can unerringly detect the man who should become a specialist in political science, or in patent law. Political science is so limited a

<sup>11</sup> For the field of law, see A. B. Crawford, "The Legal Aptitude Test Experiment at Yale," 7 *Am. Law School Rev.*, 530 (1932); 1 *The Bar Examiner*, 151 (1932).

specialty, and so closely related to law, economics, history, and other studies, that an exact prediction would seem to be impossible. In fact, even for broader categories, present interest and aptitude tests seem to be only partly reliable. Who can say with certainty, in the formative years of a young man's life, whether he is better fitted to be a botanist or a professor of law, a mathematician or a director of athletics?

2. Other suggested answers, and they are not all mutually exclusive or contradictory to each other, stress early environmental factors and home training, or the influence of the brilliant teacher, or the courses one takes. There are very few objective data which throw light upon any of these suggestions as far as political scientists are concerned. Laborers, mechanics, farmers, clergymen, professional men, and business men rich and poor, native-born and foreign-born, can all be found among the parents of present-day political scientists. The influence of the brilliant high school or college teacher, or of particular courses taken by the student, is very hard to trace in any student's subsequent career.

It is interesting to note, in this connection, from how large and varied a group of colleges the teachers of political science have been drawn. Fifty-two colleges are represented in the *Who's Who* list of 86 leading political scientists, and the same number are included in the list of colleges from which the 80 more recent doctors in political science were graduated. Over 75 different institutions are represented in the two lists. Many of them are small colleges in which there is not a full-time teacher of political science. A number of men in the *Who's Who* group, and perhaps a few in the more recent group, probably did not have a single course in political science in their undergraduate days. The late Professor Burgess notes the fact that at Amherst in the late sixties he received none of the training in political science which he was seeking. What led these men to choose the field of political science for post-graduate specialization, it would be difficult to say. Teachers of history, moral philosophy, and other subjects seem to have had a great influence. Can we not conclude, therefore, that the taking of a full undergraduate major is not necessary in all cases to the man of ability who wishes as a graduate student to major in political science? May it not be true that the undergraduate who grounds himself thoroughly in English, foreign languages, history, philosophy, sciences, and mathematics will have a good foundation for graduate study of political science, even though he has had but little of that subject as an undergraduate?

3. Some of the answers suggested for the questions propounded above turn upon economic factors. What fellowships, scholarships, and other aids are offered to graduate students to take up political science, as compared with those offered in other academic fields? To what future financial rewards can the young political scientist look forward with confidence?

No doubt such considerations have much influence in determining the choice of many a young man who is interested in political science, but is wavering between an academic career on the one hand and law or business on the other. If his mind is already made up in favor of an academic career, these factors may also have something to do with his choice of a particular academic field, because departments are not equally or proportionately well supplied with fellowships and assistantships, and proselyting is not unknown among related departments.

As far as inducements to take up graduate study are concerned, a recent study has shown that the social sciences generally are at a disadvantage as compared with the natural sciences and technical and professional studies. Less than five per cent of all awards available for pre-doctoral study are definitely allocated to the social sciences.<sup>12</sup> A careful study of our own fellowship list issued in 1931 reveals that very few fellowships and scholarships are definitely set apart for political science students.<sup>13</sup> In the long run, such deficiencies must have some effect upon the numbers recruited, and when total numbers are held down, some of the abler men must be left without subsidies along with others less able. The importance of increasing the number of fellowships open to graduate students in political science cannot be too strongly urged.

The financial rewards for teaching and research in general constitute a subject beyond the scope of this report. If such rewards are known to be generally low, as they seem to be, a number of the more calculating undergraduates will undoubtedly choose business, the legal profession, or some other field of work in preference to college teaching.<sup>14</sup> On the other hand, if a man decides to ignore the lures of higher pay in non-academic pursuits and to be a college teacher of political science, he may find some little comfort in the fact that political science teachers in colleges and univer-

<sup>12</sup> Social Science Research Council, *Report of the Committee on Social Science Personnel* (mimeographed), Sept., 1933, pp. 1-10.

<sup>13</sup> American Political Science Association, Personnel Service, "Descriptive List of Fellowships and Scholarships Available to Graduate Students in Political Science," December, 1931, 24 pp., mimeographed. This list was inaccurate in some respects when issued, and is also already partly out of date. It shows, however, the number of fellowships and scholarships involving no teaching or assistantship duties, and definitely allocated to political science or government, to be less than a dozen annually for all the leading universities and colleges. In 1931, there were, of course, many assistantships in political science departments involving such duties as teaching, paper reading, and research, but these have subsequently been much reduced in number.

<sup>14</sup> On this point may be noted the work of Harold F. Clark, in *Columbia Alumni News*, Vol. XXIV (Oct. 14, 1932), briefly summarized in *Bull. of the A.A.U.P.*, Vol. XIX, pp. 169-170 (March, 1933). For current conditions, see reports of Sumner H. Slichter on "Economic Condition of the Profession," in *Bull. of the A.A.U.P.*, Vol. XIX, pp. 97-105 (Feb., 1933); Vol. XX, pp. 105-111 (Feb., 1934).

sities are, on the average, as well paid as any of their colleagues, with the exception of teachers in a few of the professional schools.<sup>15</sup>

#### VI. QUALITY OF RECENT POLITICAL SCIENCE CANDIDATES FOR THE DOCTORATE

A recent study made for the Social Science Research Council goes thoroughly into the question of whether the social sciences are attracting young men of the highest ability in the same proportions as other disciplines. Since we have not had the facilities to make a similar study for political science alone, we report their conclusions as having at least some application to our field.

"Of the top 10 to 15 per cent of five successive college graduating classes in fifteen institutions over a five-year period ending in 1931, only a fifth of those showing marked capacity in the social sciences chose teaching-research careers, as against two-thirds of the natural science quota and a fourth of the humanities group. The fact that so small a proportion of social science honors students are entering the graduate school is explained in large measure by the strong drawing power of law and business, these two fields capturing as many as 60 per cent of the group."<sup>16</sup>

Proportions are not, of course, conclusive in such cases. Total numbers are also of some interest. The social sciences led in the total number of high-ranking graduates in the institutions studied, numbering 657 to 644 for the humanities and 289 for the natural sciences. Of these numbers, only 128 social science majors chose teaching and research careers, as against 166 in the humanities and 195 in natural sciences.

It is, to be sure, no social loss to have many young men and women of ability, well-grounded in the social sciences, going into law and business. It is one of the functions of these studies to fit students for just such careers, and to send them into life with some knowledge of the social environment in which they live. Undergraduate students of the sciences and of the humanities of necessity look more to teaching as a career than do those majoring in the social sciences. At the same time an argument can be made out in favor of attracting a larger percentage of the abler social science undergraduates into graduate work and thence into teaching and research. Of 490 first-year graduate students in the social sciences studied in nine leading graduate schools in 1931-32, only 32 per cent could be classed as honor students in their undergraduate work. The proportions were very much the same for other groups of students (humanities 30.1 and natural sciences 36.3 per cent), but the important fact is that over

<sup>15</sup> See below, p. 758.

<sup>16</sup> Social Science Research Council, *Report of the Committee on Social Science Personnel* (mimeographed), Sept., 1933, p. 8. See also the corresponding report of Sept., 1932.

two-thirds of those in the social sciences were below the honors student level, and yet were pursuing studies leading to teaching and research positions. We do not have comparable data for political science, but our situation seems to be somewhat better than the average for the social sciences. About 30 of the 80 men in our recent list have Phi Beta Kappa honors or something substantially equivalent—a good showing in view of the fact that some come from small colleges where no chapter of Phi Beta Kappa exists.

#### VII. THE DOCTORATE AND OTHER DEGREES

As an education for teaching and research in political science, the work leading to the doctorate has so fully ousted most other forms of training as to suggest that it has become a fetish, and the degree a sort of union card in a closed shop industry. This tendency results in part from the standardizing requirements of certain associations of colleges and other accrediting agencies. If a college cannot be listed as approved by the institutions in its area without having a certain proportion of its faculty made up of men with the Ph.D. degree, that college will either induce some of its younger faculty men to finish their work for the degree or it will find others to take their places. The result in either case is an extra emphasis upon the cabalistic sign "Ph.D." after a professor's name, and a rush of men into the graduate schools in search of the degree. Much of the tremendous increase of enrollments in graduate schools in recent years has come, not because all the men registered wished to do graduate work, but because they were required to get some advanced degree to obtain or to keep college teaching positions.

In spite of this recent tendency, many men can still be found in the departments of political science, as well as in others, who do not have the doctor's degree. Law school degrees (LL.B., J.D., S.J.D.) are fairly numerous among political science teachers. This is especially true in Catholic institutions, where the Ph.D. degree has relatively less vogue than elsewhere. The LL.B. is found alone, or in combination with an A.B., M.A., or other academic degree, not excluding the Ph.D. A few of the most outstanding of American political scientists lack the Ph.D. degree, and have in place thereof a LL.B. or its equivalent, with or without an M.A. Certainly the Ph.D. training is not indispensable for either teaching or research in political science. Because it is most common, it will receive most attention in this report. Its nearest rival, the LL.B. training, although it is far behind, must first be considered.

#### VIII. LEGAL EDUCATION FOR TEACHERS OF POLITICAL SCIENCE

To what extent does the training now offered in American law schools for the LL.B. degree fit men for their responsibilities as teachers and re-

search workers in the field of political science? The controversy now being waged as to the curriculum of the law school has brought rather clearly into light the nature of present law school courses.<sup>17</sup> They consist of a study, usually by the case method, and from books, of a series of legal subjects. Most of these, such as property, contracts, torts, bills and notes, corporations, insurance, equity, pleading, and evidence, are usually denominated private law subjects. Others, such as criminal law, public utilities, and conflicts of laws, are of a more public nature, and still others are even more clearly public, namely, constitutional law, municipal corporations, and (where given) international law and administrative law. It is not "law in action" or the work of the courts that is studied, but rather the law as crystallized in rules and principles by judges in the highest courts who have rendered past decisions.<sup>18</sup>

The objectives of legal education, as Dean Pound has expressed them, are primarily to fill the need for "good trial lawyers," "good advocates before the courts in bank," and "good office lawyers," although the needs for good judges and legislative draftsmen are not entirely ignored.<sup>19</sup> The stress in legal education must of necessity be on the preparation of private practitioners, men who are to advise and represent private clients. The purpose is not to train teachers of government. It is probably not unfair to say, therefore, that in most cases even the courses in public law are taught with an eye to the needs of the practicing lawyer. Everyone at all familiar with the subject knows how differently courses in constitutional law, for example, can be taught by teachers having essentially different purposes. Because most constitutional cases encountered in private practice will deal with the due process, contract, and commerce clauses, it is not surprising to find these topics strongly emphasized in law school courses in constitutional law. One teaching the same subject for the purpose of giving students some understanding of government will give emphasis to very different topics.

Other dangers in an exclusively legal education for the teacher of political science are not hard to indicate. The main subjects of a modern political science curriculum are not covered in the law school. Political thought, comparative government, public administration, and local government are a few cases in point. There is danger, also, in a merely juristic approach to the study of government. All the new developments in the

<sup>17</sup> Alfred Z. Reed, *Training for the Public Profession of the Law* (N. Y., 1921), and also *Present-Day Law Schools in the United States and Canada* (N. Y., 1928), espec. Chap. 14. See also *Amer. Law School Review*, which has recently printed many articles on this question, and especially the symposium on "What Constitutes a Good Legal Education," in Vol. VII, pp. 887-909 (Dec., 1933).

<sup>18</sup> Jerome Frank, in *7 Am. Law School Rev.*, 897 (Dec., 1933).

<sup>19</sup> *Ibid.*, 889-890.

study of politics are going toward the enrichment and the rounding-out of the whole subject, not toward the narrowing of it, and particularly not toward further emphasis upon the legal phases. History, economics, psychology, anthropology, and other disciplines offer just as interesting and fruitful approaches to the study of politics as does the law.

There is, finally, another characteristic of the present-day training of legal practitioners which makes it inadequate as a training for research and teaching in political science. The most commonly employed research method is that of looking up cases in point, finding the principles embedded in them, and testing these principles by logic or "dialectic technique." There is no time or demand for training in other research methods, no urge to apply statistical and other techniques to the materials, and often no desire to go outside of the decisions in order to test the results of the operation of legal rules on social or economic life, or on personal conduct.<sup>20</sup>

These comments are not to be taken as in any sense adverse criticisms of present-day law school training as a preparation for practicing attorneys. The debate upon that subject must be left to the lawyers and law teachers. Neither do we intend to deny the very high degree of success which legal education seems to have in sharpening wits and in enabling lawyers to draw fine and sharp distinctions and to reason with logic and cogency. There are certain strong points in legal education which no one can fail to see. Our main purpose has been to show certain limitations inherent in the very nature of the work in law schools as an education for teachers of political science. Since many small colleges still employ lawyers to teach their courses in political science, these limitations are important to keep in mind.

Despite the fact that it is expensive, the combination of a law school course and a course of graduate study leading to the Ph.D. in political science is probably unexcelled for teachers of public law subjects. Another combination of high merit is that of an M.A. degree in political science and a LL.B. and S.J.D. degree, where both the M.A. and the S.J.D. require a showing of genuine research ability. In several leading law schools, the S.J.D. degree, representing a year of study after the LL.B., has a high value as a research degree.

#### IX. THE MASTER OF ARTS DEGREE IN POLITICAL SCIENCE

The significance of the M.A. degree, and the nature and content of the work leading to it, have been widely discussed in recent years. Several leading academic organizations, notably the Association of American Colleges, the Association of American Universities, and the American

<sup>20</sup> There are, of course, some notable exceptions to this statement, but they are exceptions, not the rule.

Association of University Professors, have given extended consideration to the subject.<sup>21</sup>

About the only point upon which the various reports agree is that "obviously the M.A. degree no longer has any definite meaning; or more properly, it has acquired a diversity of meanings which it is impossible to harmonize." "Is it a craftsman's degree, or a technician's, or a scholar's?" asks one observer. Does it represent preparation for teaching, or for research, or does it stand for further cultural training beyond the A.B.? The standards set for the degree vary so much from institution to institution, and among departments in the same institution, that no generalization can be made concerning it.

As far as the collegiate teaching of political science is concerned, although many present teachers hold this degree, it cannot be considered as a rival to the Ph.D. A number hold it in combination with a law degree. Perhaps a larger number, consisting mostly of young teachers, have taken the degree only as a step toward the Ph.D.

On the other hand, in the high schools of certain states the M.A. degree is either held in high esteem or is practically a requirement for the attainment of a teaching position. For this group it is important that the nature and status of the degree be fully understood, and that the work taken to obtain it be suited to the needs of the group. To make the degree what it needs to be is a problem which educational statesmanship in America has only begun to consider.

#### X. CONTENT OF THE REQUIREMENTS FOR THE DOCTORATE

For better or for worse, the colleges and universities of the United States have hit upon the Ph.D. degree as representing the sort of training needed by college and university teachers of professorial rank in most departments of instruction. This degree is, therefore, of paramount importance.

In one of the first studies made in connection with the work of the Subcommittee on Personnel, the requirements for the Ph.D. in political science in the leading American universities were summarized. Since this summary is available in the pages of a recent volume of the REVIEW,<sup>22</sup> we note here only the few changes and proposed changes which have come to our attention.

In general, the changes in the past few years have appeared not as new legislative rules governing the degree, but as administrative decisions in

<sup>21</sup> See *Bull. of Am. Assoc. of Univ. Prof.*, Vol. XVIII, pp. 169-185 (March, 1932), for a committee report on "Requirements for the Master's Degree," and *Journal of Proceedings and Addresses of the Thirty-Third Conference of the Assoc. of Amer. Universities*, 1931, pp. 45-57.

<sup>22</sup> See this REVIEW, Vol. XXIV, 711-736 (Aug., 1930).

the political science faculties to tighten and stiffen the enforcement of the rules. A number of institutions report that the less promising candidates for the degree are being discouraged from proceeding toward it. Several departments report the introduction of written examinations at the end of the first year. Others report making these qualifying examinations much more exacting than those previously used. At Stanford, an oral examination of a general nature before all members of the department faculty is now required early in their first year of work of all who wish to be candidates for the degree. At Pennsylvania, care is taken to analyze each new student's training, experience, special fields of interest, and professional or vocational aim, and advice is given as to the prospects for employment. These attempts at guidance and at the weeding out of the less capable candidates take place early in the graduate work. Others appear at later stages in the work, such as comprehensive written as well as oral examinations.

As to content, Columbia requires the candidate to pass a written examination in theory before the oral examination can be taken. Northwestern reports that, in addition to holding candidates for a general knowledge of American and European governments, it now requires them to pass examinations in theory, public law, and one special field. Missouri has eliminated the fixed requirement of a minor, and thus has made somewhat more flexible its rules as to what subjects a student may offer, subject to the approval of an advisory faculty committee.

Criticisms of present Ph.D. requirements have come principally from two quarters, (1) teaching and (2) research.

1. From the one side it is asked, "What are most Ph.D.'s going to do most of their lives?" The answer is, of course, that they are going to teach. Speaking especially of the faculties of colleges in the North Central Association, one writer says: "The truth is that *these faculties are teaching faculties* engaged with students who are too immature for the business of investigation, and with bodies of information that are far short of the frontiers of knowledge."<sup>23</sup> To deny the substantial truth in this statement is impossible. As to the conclusions to be drawn from it, there is more debate. To one school of thought, it follows as a matter of course that candidates for the Ph.D. should take courses in teaching or in education, and a few even press this argument so far as to say that these courses should be in the colleges of education now established in most of the leading universities.

<sup>23</sup> M. E. Haggerty, "The Occupational Destination of Ph.D. Recipients," *Educational Record*, Vol. IX, 209-218 (Oct., 1928). See also F. J. Kelly, "The Training of College Teachers," *Jour. of Educ. Research*, Vol. XVI, 332-341 (Dec., 1927), and "Report of the Committee on Professional Training of College Teachers, 1930" (6-page leaflet).

Others hold that this does not follow at all. Law students study law, not the practice of law, although they give most of their time later to practice. Students of medicine study medicine, not primarily the practice of it. The distinction is broadly made, in other words, between the science and the art. In our own field of work, for example, politics, or the science of politics, may be studied with profit, but the several arts attached to it—the art of politics, the art of teaching politics, and the art of legislation, for example—are deemed not to be capable of mastery through study alone, if at all. Even educationists often make the distinction between the science of education and the art of teaching, and do not claim that all specialists in education are good teachers. By general agreement, there is something personal, intangible and indefinable about the quality of being a good teacher.

Admitting all this, however, it is not fair to conclude that no thought whatever should be given to the problem of teaching. There are certain essential techniques, such as those in the field of examinations, with which the good teacher will be familiar. Other problems relating to college and university administration are of sufficient importance to every teacher to merit some study. In short, the teacher's responsibilities as a teacher and as a member of a college or university community are worthy of the most careful attention. The hit or miss method of trial and error can no more be tolerated than the attitude of mind which ignores all responsibility for the success of the college in which one teaches.

If so much be admitted, what practical conclusions can be drawn? First, teaching techniques are relatively more important, and knowledge of subject-matter less important, at the pre-school, kindergarten, and grade school levels. Farther up, the knowledge of subject-matter becomes increasingly important, and the techniques of teaching less important.<sup>24</sup> The college teacher needs to be a scholar with broad and deep knowledge of his subject. At the graduate school level, the teacher needs a mastery of his subject in the highest sense.

Another distinction needs also to be made. At the lower levels, one needs to know how to handle children, in a general way, and the techniques of teaching in the simple subject-matters presented are not highly differentiated. Teaching methods applied at these levels can be studied and learned. At the higher levels, as subject-matter becomes more difficult and involved, teaching methods also become more highly differentiated according to the subject taught. In the college, teaching methods are more or less peculiar to each subject, and this fact is still more true of

<sup>24</sup> See J. B. Johnston, *The Liberal College in Changing Society*, pp. 276-282; also *Bull. of Amer. Assoc. of Univ. Prof.*, Vol. XIX, pp. 173-200 (Mar., 1933), for a vigorous criticism of present required courses in education for secondary school teachers.

graduate instruction. General courses on teaching methods will not meet the needs of those who are to instruct in advanced college and graduate subjects.

For these reasons it would seem that each department giving graduate instruction and preparing to send out men with the Ph.D. degree who in turn may become graduate school teachers needs to develop its own work in teaching methods. This does not involve anything very formal. In his classes and seminars, the graduate student may learn much from observation of the good and bad in teaching methods. He may be offered the opportunity to present in class his own reports, to handle occasional classes under supervision, and to take on sections in larger courses as a teaching assistant. A course in "Scope and Methods of Political Science" might well be devoted in part to teaching methods, and through it the student might at least learn something of the growing literature on the teaching of political science. In the same course he might also be introduced to the principal works on American college and university problems. He would then be not wholly ignorant of his responsibilities as a teacher and a faculty member.

2. Those who criticize the Ph.D. training for college teachers because of its alleged failure to stress teaching methods either state or imply that there is over-emphasis on research. The thesis requirement in particular is condemned as being either unnecessary or at least excessive in its present form.

From another quarter has come a different attack upon the Ph.D. requirements and the manner in which they are enforced. The Committee on Social Science Personnel of the Social Science Research Council, reporting in 1933, expressed considerable dissatisfaction with the degree from the research point of view.<sup>25</sup> It traced the tendency toward mass production of Ph.D.'s to fill teaching positions, with the consequent standardization and weakening of the requirements, the spread of graduate work to an increasing circle of weaker and weaker institutions, and the granting of degrees to many candidates who are not of the first order of ability. The degree was in fact, the committee thought, becoming more and more a teachers' degree rather than a research degree. Instead of being used to distinguish the more gifted and productive post-graduate students, it was being conferred as a routine matter upon increasing numbers of men not of the first order of ability and not interested in research, men who wanted the degree only as a ticket of admission to the ranks of college teaching faculties.

<sup>25</sup> Social Science Research Council, *Report of the Committee on Social Science Personnel* (mimeographed), Sept., 1933, and the corresponding report for 1932. See also supplement to *Ann. Report of the S.S.R.C., 1931-32*, on "Training for Research in the Social Sciences."

"Without slighting the importance of providing an adequate corps of intelligent and broadly trained teachers for our secondary schools and colleges, and realizing that the provision of effective teachers is vital to the development of research personnel, the Committee is convinced that the tasks confronting social science in the next ten or fifteen years call imperatively for an increasing supply of first-rate research men equipped to explore the complex problems of society and capable of commanding the respect and confidence of the thinking public. In focusing attention upon this objective, the Committee assumes that the types of training now provided in our better graduate schools will continue to be available and that the effective scientific work now being done by the beneficiaries of that training will go on. It is clear, however, that the tendency toward a standardization of graduate requirements, frequently for purposes of convenience and on account of inadequate institutional facilities, has been a real barrier to the stimulation of potential social research personnel. The Committee therefore recommends that at least some graduate students of exceptional promise be given an opportunity to follow a different program and that, to this end, our graduate schools should adopt a more flexible system of graduate training than now prevails."<sup>26</sup>

The committee noted certain hopeful experiments in the direction both of higher standards and of more flexible methods under way in a number of institutions. These included the following: (1) the "adoption of selective standards of admission," to keep down total numbers and to restrict graduate work to the most able group of college graduates; (2) the "development of devices for weeding out mediocre material at the first-year graduate level"; (3) a "trend away from required course work" and the more formal types of course instruction for graduate students; (4) the "flexible adaptation of regulations to individual needs," to enable the better prepared and more gifted students to begin early to develop research habits, without being held up by examinations and course requirements; (5) the establishment of "inter-discipline" fields of concentration for the Ph.D." Under this last heading the committee spoke favorably of permitting students to concentrate (or distribute?) their work in such a field as international relations, or crime, or urbanism, and to cut across the lines of economics, political science, sociology, etc., in order to get the work they need.

While these hopeful signs were favorably mentioned, the committee thought that "full initiative to the brilliant and original individual" was something still to be attained. It urged consideration especially of the following proposals: (1) that the student be given "direct contact with the phenomena which he studies," through "research apprenticeships"

<sup>26</sup> 1933 report, p. 13.

in connection with "social, governmental or business agencies, or research institutes," so that the student might "live for a time in direct contact with the phenomena and personalities" in his field of study; (2) that two or more smaller pieces of research might in some cases be deemed preferable to the one long thesis; (3) that a system of fellowships be established to recruit "first-year graduate students of exceptional promise," to promote "increased flexibility in training," and especially to permit students during a part of their graduate work to live and study in direct contact with their materials.

It is clear that the committee was particularly desirous of making graduate study somewhat more realistic and less bookish and cloistered than it has been in the past, of breaking down inter-disciplinary boundaries wherever these stand in the way of a full understanding of any research subject, and of bringing the graduate student to a comprehension of research methods of every kind that might help him in the study of his own problem.

It would, or course, be rather difficult to study certain fields, such as political theory and the history of political thought and institutions, in the realistic and "first-hand" manner suggested above. International law and relations, too, are not fully susceptible to such a method of study, although trips to Geneva and The Hague are helpful, and apprenticeships in the State Department might be possible. In the fields of public administration, legislation, and judicial administration, to mention but a few, a direct approach to many types of material is possible, and American graduate students in political science have probably done more realistic work in the fields of local and state government and administration than many persons in other disciplines realize. In fact, one of the dangers in some fields of political science is that the student will be drawn so quickly and completely into practical and realistic work that he will fail to become well grounded in the broader and deeper phases of his subject, such as theory and public law.

Just how the more realistic and practical parts of a student's work can best be provided, it is not easy to say. To send a student into certain offices of government for an apprenticeship would be of little value. Once he had learned certain routine procedures, there might be little more for him to do, and even this would not help much in developing his ability to do research. The research must be carefully planned in advance and the personal contacts must be made with the utmost skill and diplomacy if the student is to have any freedom for research in the government office and any chance of success. In many cases, an institute or bureau of government research would offer much more opportunity for research than the student would find in any government department.

The findings of the Committee on Social Science Personnel discussed

above do not stand alone. Many members of the American Political Science Association, in answer to our query concerning training, expressed views which, when pieced together, summed up to about the same result. At the same time, the somewhat conflicting claims of teaching and research were clearly brought out, and a few took the position that there should be two different types of training, one for the teacher and the other for the researcher. This is a step which the deans of graduate schools very generally oppose, and for reasons which have much cogency.

#### XI. TURNOVER AMONG COLLEGE TEACHERS OF POLITICAL SCIENCE

If men are to be trained only in sufficient numbers to fill vacancies in the present staff of political science teachers in American colleges and universities, how many will be needed each year? Have the graduate schools in recent years conferred the Ph.D. in political science on more men than could reasonably be expected to find suitable teaching positions?

Questions such as these arose in the minds of the members of the Subcommittee on Personnel in the last few years. The placement service compiled each year a long list of men available for appointments, and found that many of them could not be placed in teaching positions. Was this due wholly or mainly to the abnormal economic conditions in the colleges, or was the output of Ph.D.'s itself abnormally large?

To get even an approximate answer to these questions, it was necessary to study both the supply of and the demand for men trained in political science. It seemed reasonable to consider primarily the numbers of men graduated from year to year with the political science Ph.D. The following table is substantially complete for the years from 1920-21 to 1932-33, inclusive, since it includes full reports from the 27 leading American graduate schools which are members of the Association of American Universities. The figures for the years 1901-2 to 1919-20 are obviously less complete, but even these are valuable as indicative of trends. The data are given by institutions.

As an indication of the numbers of men and women trained for college and university teaching in political science in the United States, these figures are incomplete in several respects. (1) They include only training for the Ph.D., and not for the M.A., S.J.D., and other degrees. (2) There are no figures for graduate schools which are not members of the Association of American Universities. For several years, the Brookings Graduate School conferred a number of Ph.D. degrees in political science, and the New York University, the University of Washington (Seattle), and several other non-members have each conferred several such degrees. (3) There are no figures, either, as to Americans receiving degrees from foreign universities, or as to foreigners trained abroad who come here for teaching positions.

TABLE V. PH.D. DEGREES IN POLITICAL SCIENCE CONFERRED FROM 1902 TO 1933

R.O.*	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
1 Columbia	2	2	3	3	2	2	0	3	2	5	3	5
2 Chicago	—	4	1	3	3	3	6	3	1	1	0	2
2 Harvard	1	0	1	0	0	0	0	0	0	0	1	0
4 Johns Hopkins	—	—	—	—	—	No data	—	—	—	—	—	—
5 Iowa	0	0	0	0	0	0	1	0	2	1	1	1
6 Wisconsin	—	—	—	—	No data	—	—	—	0	0	2	3
7 Pennsylvania	2	1	1	0	0	0	0	0	1	2	1	0
8 Illinois	—	—	—	—	No data	—	—	—	—	1	0	0
9 California	0	0	0	0	0	0	0	0	0	0	0	0
10 Princeton	—	—	—	—	—	No data	—	—	—	—	—	—
10 Stanford	—	—	—	—	—	No department of political science	—	—	—	—	—	—
12 Michigan	—	—	—	—	—	No data	—	—	—	—	—	—
13 Minnesota	0	0	0	0	0	0	0	0	0	0	0	0
14 North Carolina	0	0	0	0	0	0	0	0	0	0	0	0
15 Cornell	—	—	—	—	—	No data	—	—	—	—	—	—
16 Ohio State	—	—	—	—	—	No data	—	—	—	—	—	—
16 Northwestern	—	—	—	—	—	No data	—	—	—	—	—	—
18 Texas	—	—	—	—	—	No graduate work in political science	—	—	—	—	—	—
18 Indiana	0	0	0	0	0	0	0	0	0	0	0	0
18 Yale	0	0	0	0	0	0	1	0	0	0	0	0
18 Nebraska	—	—	—	—	—	No data	—	—	—	—	—	—
22 Missouri	—	—	—	—	—	No data	—	—	—	—	—	—
22 Washington (St. L.)	—	—	—	0	0	No data	—	—	0	0	0	0
Total	5	7	6	6	5	5	8	6	6	10	8	11

TABLE V. PH.D. DEGREES IN POLITICAL SCIENCE CONFERRED FROM 1902 TO 1933 (Continued)

R.O.	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
1 Columbia	3	3	4	7	6	1	6	9	2	3
2 Chicago	1	5	4	1	2	0	2	3	4	1
2 Harvard	1	0	1	2	2	0	1	2	1	3
4 Johns Hopkins	—	—	No. data	—	—	4	1	2	2	2
5 Iowa	2	1	3	1	1	0	0	1	1	1
6 Wisconsin	2	0	1	1	1	0	2	1	1	2
7 Pennsylvania	0	0	1	3	3	2	0	0	0	4
8 Illinois	0	1	1	0	0	1	1	1	1	0
9 California	0	0	0	2	0	0	1	1	4	1
10 Princeton	—	—	No data	—	—	1	0	1	1	2
10 Stanford	—	—	No. dept. of Pol. Sci.	—	0	0	0	0	0	1
12 Michigan	—	1	1	0	0	1	0	0	0	0
13 Minnesota	0	0	1	0	0	0	0	0	0	0
14 North Carolina	0	0	0	0	0	0	0	0	0	0
15 Cornell	—	—	No data	—	—	0	0	0	0	0
16 Ohio State	—	—	No data	—	—	0	0	0	0	0
16 Northwestern	—	—	No data	—	0	0	0	0	0	0
18 Texas	—	—	No graduate work in Pol. Sci.	—	—	0	0	0	0	0
18 Indiana	0	1	1	2	0	0	0	0	0	0
18 Yale	0	0	0	0	0	0	0	0	0	1
18 Nebraska	—	—	No data	—	—	0	0	0	0	0
22 Missouri	0	0	0	0	0	0	0	0	0	0
22 Washington (St. L.)	—	0	0	0	0	0	0	0	0	0
Total	9	12	18	19	15	5	18	19	17	21

TABLE V. PH.D. DEGREES IN POLITICAL SCIENCE CONFERRED FROM 1902 TO 1933 (Continued)

R.O.	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	Total
1 Columbia	3	5	7	8	6	5	2	8	9	10	139
2 Chicago	3	4	3	7	7	2	4	2	6	4	92
2 Harvard	6	3	5	3	2	1	4	7	9	4	60
4 Johns Hopkins	3	4	1	2	8	4	5	7	4	6	52
5 Iowa	1	6	1	2	6	2	2	3	3	6	49
6 Wisconsin	3	1	0	3	3	6	2	1	2	1	38
7 Pennsylvania	2	1	1	2	3	0	2	2	2	0	36
8 Illinois	3	2	1	5	4	1	5	1	1	3	33
9 California	2	1	1	2	0	1	3	3	2	2	26
10 Princeton	3	1	1	4	1	2	3	0	3	1	17
10 Stanford	0	1	1	1	3	2	0	0	1	3	15
12 Michigan	0	1	1	1	0	0	1	0	1	1	8
13 Minnesota	0	0	1	0	1	0	1	2	0	0	6
14 North Carolina	0	0	0	3	1	0	2	0	0	0	4
15 Cornell	1	0	1	0	0	0	0	1	1	1	3
16 Ohio State	0	0	0	0	0	0	1	1	0	0	3
16 Northwestern	0	0	0	0	0	0	0	1	2	0	2
18 Texas	0	0	0	0	0	1	0	1	0	0	6
18 Indiana	0	0	0	0	1	1	0	0	0	0	3
18 Yale	0	0	0	0	0	0	0	1	0	0	1
18 Nebraska	0	0	0	0	0	0	0	0	1	1	2
22 Missouri	0	0	0	0	0	0	0	0	1	1	1
22 Washington (St. L.)	1	0	0	0	0	0	0	0	0	0	1
Total	31	30	25	41	50	29	35	40	49	48	614

\* Rank order based upon number of degrees conferred 1920-21 to 1932-33 inclusive.

The numbers involved in each of these omitted categories would certainly not be large. It is very doubtful whether they would seriously alter the trend so clearly shown in the figures. The tendency is clearly one of slowly increasing numbers down to the World War, a rather noticeable increase in annual numbers at about that time, and then a very considerable increase in the post-war years from 1924 to 1933. The peak was in 1928, but 1932 and 1933 are within one and two, respectively, of the peak. By decades, the figures are 378 (nearly 38 a year) for 1924-33; 153 in the decade of 1914-23, on the basis of less complete figures; and 71 in the decade 1904-1913, on the basis of partial figures.<sup>27</sup>

The total figures show 614 Ph.D. degrees in political science, conferred by the American universities listed, in the 32 years from 1901-02 to 1932-33, inclusive. Complete figures would probably reveal about 675 to 700 as the actual number. This figure comes close to the number of teachers of political science previously estimated, which was somewhere between 600 and 700. Of course not all those trained for this field have become teachers, and some have left the field or died; but on the other hand a considerable number of teachers have entered by other gates.

The great increase in numbers in recent years is shown by the fact that over two-thirds (435) of the whole number of degrees given in the table above were conferred in the post-war years, 1920-21 to 1932-33 inclusive. Of these, it is interesting to note, 290, or two-thirds, were conferred by the private universities, including Pennsylvania and Cornell, and 145 by the state universities. In the preceding two decades, the predominance of the private institutions was much more noticeable. Regionally distributed, the 435 came half (217) from institutions in the Northeastern states, where most of the great private universities are located; about 40 per cent (170) from universities in the Middle West; less than 10 per cent (40) from the Far West; and less than 2 per cent (8) from two institutions in the South—North Carolina and Texas.

This notable increase in the number of doctors' degrees was paralleled, of course, by an even greater increase in college and university enrollments in this period.<sup>28</sup> It was paralleled also by the increase of graduate degrees of almost every kind in the same decades.

How many of these young Ph.D.'s sought college and university teaching positions? It has been shown in other studies that as a rule approxi-

<sup>27</sup> It is interesting to notice that the increase in the number of Ph.D.'s conferred in political science corresponds very closely with the numbers conferred in all fields. The figures follow: 1890, 126; 1900, 342; 1910, 409; 1920, 532; 1926, 1,302; 1928, 1,447; 1930, 2,024. See *Statistical Abstract*, 1932, p. 104.

<sup>28</sup> As reported by the Bureau of the Census, the total number of collegiate students enrolled in American colleges and universities increased as follows: 1890, 173,691; 1900, 224,284; 1910, 332,696; 1920, 521,754; 1930, 971,584.

mately 75 to 80 per cent of all men who attain the doctorate of philosophy in American universities take up collegiate teaching as a profession.<sup>29</sup> The proportion in the case of Ph.D.'s in political science seems to be higher than the average. Chemists, physicists, and others have found many opportunities in private industry and in the technical services of national, state, and local governments. There have usually been very few opportunities of this kind for political scientists. Hence we may assume that, except for temporary appointments in the present emergency, practically all of our young doctors have sought college or university teaching positions.<sup>30</sup> This would mean that about 350 of the 378 Ph.D.'s graduated from 1923-24 to 1932-33, inclusive, or 35 per year on the average, went into teaching if they could. Some of them, of course, merely returned to positions from which they had obtained leave while pursuing graduate studies. A number of foreigners, such as Chinese and Japanese, need also to be excluded from this reckoning, since they usually return to their home countries after obtaining the Ph.D.

The important point is to know the ratio between the number of vacancies and the number of men graduated annually. Do we know the rate of annual turnover in political science teaching positions? How many vacancies are there likely to be each year? For obvious reasons, an exact figure is impossible to obtain, but a reasonable approximation is not out of the question. We estimate that with stable conditions in the economic world and no important increases in college enrollments or changes in educational policies, the number will not exceed, and may be considerably less than, 30 a year. This estimate is based upon so many assumptions that it has, of course, very little validity as applied to actual conditions. It was arrived at by a consideration of American mortality rates, retirements, withdrawals to enter other fields of work, and other factors.<sup>31</sup>

That the estimate is approximately correct is evidenced by the fact that even before the depression set in, some new doctors in political science were not placed in positions upon graduation, and that as soon as the depression came, the number of those unable to obtain college teaching positions suddenly increased. There was a real surplus problem. Forty to fifty new Ph.D.'s each year were more than the market could absorb.

If Ph.D.'s continue to be graduated in the future at the rates recently prevailing, and in the face of deflated college budgets and stationary or

<sup>29</sup> M. E. Haggerty, *op. cit.*

<sup>30</sup> Our own recent personnel lists have included nearly all the young doctors in political science of recent years.

<sup>31</sup> It should be noted that most of the men teaching political science in American colleges and universities are relatively young, and that the vacancies due to deaths and superannuation are at present relatively few.

declining college enrollments, what is likely to happen? 1. The heads of graduate schools and of political science departments in them are likely soon to notice the tendency, and to discourage some of the less able graduate students from becoming candidates for degrees. This is already happening to some extent, and there is much healthy talk about more careful selection of graduate students at entrance. 2. If the numbers graduated are not soon reduced to conform to the demand, there will be a considerable number of men in the country, although not in any one section, who will be without the teaching positions they seek.<sup>32</sup> The larger the number of these men, the more effect they are likely to have on beginning salaries for instructors in political science. College presidents attempting to balance budgets in these times cannot in all cases be blamed for seeking to reduce salaries. 3. On the other hand, some of these men will find positions of other types. A number have already been employed in government service, and there will be other outlets for them, to be discussed later. Other possibilities are a renewed growth of college enrollments, an increasing demand from secondary schools, junior colleges, teachers colleges, etc., for political science teachers, and the possibility of the rise of new institutions or of a new emphasis on political science. A separate word needs to be said about some of these possibilities.

#### XII. HIGH SCHOOL TEACHING POSITIONS

In the present membership of the American Political Science Association, there seem to be very few high school teachers. The number appears not to have increased since 1912, and never was large. From other indications it appears, also, that relatively few men with the doctorate in political science, men of the kind who would subscribe to the REVIEW, are teaching in high schools. How can this condition be explained?

1. State teacher certification laws generally require applicants for certificates to have taken a considerable amount of work in courses in a department of education. Most of the men who have gone ahead to the doctorate have refused or failed to take this work, since they were generally not interested in secondary school positions. Thus it is that many Ph.D.'s, though thoroughly grounded in subject-matter, are technically disqualified to hold such posts.

2. State departments of education, superintendents of schools, and principals of high schools have generally not encouraged the employment of men with doctors' degrees. They have made no exceptions in their favor, as far as we have been able to learn, and they hold in many cases that the Ph.D. discipline, with its emphasis on specialization and research, really unfits a man for teaching in secondary schools. In some

<sup>32</sup> See p. 758 below for the employment data on recent doctors in political science.

private schools, on the other hand, one finds a few teachers who hold the doctor's degree.

3. Most men who take the Ph.D. degree are definitely opposed to seeking high school positions. Of 26 recent graduates who answered our question on this point, 17, though out of employment, had made no attempt to obtain such posts, while 9 had made some applications. The young men who expressed themselves on the question were in general opposed to the idea of a concerted effort to open the high school teaching field to them. One said: "I do not feel that I would like to teach in the secondary schools, unless as a last resort." Several said, in essence: "The Ph.D. degree is a liability instead of an asset in secondary school positions." Another comprehensively summarized the situation as follows: "The American high school does not provide for stimulating intellectual contacts, it does not have facilities for independent research, it gives no opportunity for travel, its environment is often cramped and barren, and the minutiae of teaching routine and the constant adaptation to juvenile levels of thinking are deadening to original scholarship."

Not only this youngest group of men, but also the great majority of the others who answered our query on this point, were opposed to any organized drive to place our surplus Ph.D.'s in the secondary schools. It was pointed out, among other things, (a) that the Ph.D. training is not the most suitable for high school civics teaching, (b) that the long-time financial rewards for such teaching would not be commensurate with the expense of the doctor's education, (c) that the high school offers the scholar few if any of those conditions, opportunities, or encouragements which lead to scholarly growth and productivity, and (d) that the high school teaching field is itself badly overcrowded and becoming less remunerative through salary cuts.

Such was the predominant sentiment expressed. On the other hand, a few saw more hopeful signs in the secondary schools. One thoughtful observer pointed to the steady rise in state requirements with respect to the professional preparation of teachers as evidence of a possible future demand for the Ph.D. training for high school teachers. If in fact the standards are rising, this is persuasive reasoning. The same correspondent pointed to "the steadily growing interpenetration of college-level and secondary school systems" and a breaking down of the old sharp distinctions. The junior college, for example, is frequently combined with a senior high school. If only one man is employed to teach government in both divisions, the higher standard of the college may prevail, and a Ph.D. be appointed. Likewise there is in the field of language teaching already much recognition by the colleges of what the secondary schools are doing. A foreign language well learned at the lower level need not be repeated at the higher, but instead the student can go on to more advanced courses.

If this were done in the field of government, the larger city high schools might be induced to put their "civics" courses on a firmer and better footing. In time, then, what the combined high-schools and junior colleges and the best city high schools were doing to raise standards would react on and improve the standards of appointment and instruction in other secondary schools. A few have expressed the hope that American high schools will come in time to have faculty standards equal to those of the German *Gymnasium*, in which the employment of Ph.D.'s is a common practice.

It would appear, then, that in the immediate future there is little prospect of placing many young doctors in political science in secondary school positions. The emergency will probably have passed before much can be done. In the long run, however, some experimentation on this line may be highly useful, despite present drawbacks. We would suggest (a) that members of the American Political Science Association support the general movement to raise the standards in secondary schools, (b) that where possible state certificate requirements be so modified as to exempt those having the Ph.D. from the usual requirements in courses in education, and (c) that careful thought be given to the question of whether the present work in government in high schools should not be changed in character and perhaps increased in amount.

### XIII. JUNIOR COLLEGES, TEACHERS COLLEGES, AND ENGINEERING SCHOOLS

According to the last figure we have found, there are over 340 junior colleges in the United States. Many of them are very small institutions attached to some high school. Indeed, only a small percentage of them have separate buildings, although some have separate faculties in the same building as the high school. Where the same building is used, so also is the same library. It is quite obvious, in view of this situation, that high school standards will dominate to a large extent and that not many Ph.D.'s in political science will be employed to teach the few courses offered in government. Such is in fact the case. Less than a dozen junior colleges even subscribe to the REVIEW, and probably not over 25 teachers in junior colleges in the whole country are members of the Association.

Of the nearly 250 normal schools and teachers' colleges in the United States, about 220 offer general training for elementary school teachers or for both high school and elementary school teachers. The course in most is only two years beyond the high school, but some, usually styled teachers colleges, now offer four years of work. The two-year normal school is still essentially a place of training for primary school teachers. There is great stress upon teaching methods, and the faculty members are selected largely from the leading teachers colleges in universities where training in methods is an outstanding purpose. Even where four years of work are

offered, the faculty is still much the same as that of the two-year normal school out of which the four-year schools have usually grown. It is not surprising, therefore, to find relatively few men with doctor's degrees in political science teaching in these faculties. Very few of them have a department of political science. "Social science" and "history and social science" are some of the more common captions. Not over 50 normal school and teachers college libraries subscribe to the REVIEW, and probably not over 100 teachers in these institutions are members of the Association.

As to engineering schools, we were shown in the previous report of the Committee on Policy that they give very little attention to the subject of government, and that there has been no evidence of any change in this respect since 1914.<sup>33</sup> The number of teachers of political science in such schools is very small.

In short, the three types of institutions covered in this section of our report offer little encouragement for the early employment of teachers of political science. The long-run situation may be a different matter. Since the market has become glutted with teachers for both primary and secondary schools, the teacher-training institutions are turning to offering more general cultural work and to holding themselves out as in part liberal arts colleges. Junior colleges also are in some cases trying to raise themselves to the status of four-year colleges. Should these developments come to any considerable extent, these institutions should each employ at least one full-time teacher of political science. This need not necessarily involve a corresponding decrease in the number of political science teachers in other institutions.

#### XIV. PART-TIME TEACHERS OF POLITICAL SCIENCE

The part-time teacher is especially numerous in the field of collegiate political science, and he presents a special problem to the profession. He is especially numerous in the smaller colleges, including teachers colleges and junior colleges. In most cases, he is a teacher trained for some other field of work, such as history, economics, or sociology, who is giving most of his teaching time to courses in that field, but who consents to teach one or more courses in political science. To make its offerings complete, the college wishes to offer political science, but it does not feel that it can afford to employ a man especially for that work.

In other cases, the teacher of political science is an administrative officer of the institution—a dean, business manager, or librarian—and devotes most of his time to that work rather than to teaching. In many small institutions, it appears also that some local practicing attorney comes to

<sup>33</sup> Supplement to this REVIEW, Vol. XXIV (1930), pp. 154-159.

the college a few days a week to teach American government and perhaps one or two other courses. In the larger institutions, some part-time teachers of political science are men who give most of their time to some bureau of governmental research, or to editing some periodical related to the field. Men falling in the latter group undoubtedly have a real contribution to make as teachers, since they are daily engaged in studying the problems of government.

The man who cannot give his whole time to the study and teaching of government may have fine personal qualities and teaching ability, but he will ordinarily be unable either to keep abreast of the rapidly growing literature of the field or to establish his standing as a scholar in the subject. If some other subject, such as history, economics, or sociology, has first claim upon his interest, or if some other business demands much or most of his time, his work in political science will necessarily be slighted, and will suffer correspondingly. Some colleges, of course, have established the policy of having only one department of "social sciences" instead of separate departments in each separate discipline. If there were any training which resulted in a thorough fusion of the several subject-matters, this would be more justifiable, but as yet such training has not been developed. The best scholarly work is still done in the separate disciplines, and most teachers go out with a primary interest in one field. Even though there is, for administrative purposes, one department of the social sciences, there is still need for at least one man trained specifically in each field. The only good solution for the part-time teacher problem would seem to be to end it. This will involve some additional expense in many schools, and no one expects such a change to come immediately. It could at least be established as an ideal, however, that every college seriously purporting to offer instruction in political science should have at least one teacher well trained in the subject and giving full time to it. The idea that any one can teach a course or two in government is one which needs to be exploded.

#### XV. ECONOMIC CONDITIONS IN COLLEGE TEACHING

An attempt was made to obtain accurate data on the current situation with respect to the salaries, ranks, tenure, teaching loads, and other factors affecting the economic position of teachers of political science. The more this subject was considered the more clearly it appeared that (a) the data are exceedingly difficult to obtain in any reliable, stable, and comparable form as to a limited discipline such as political science, and (b) that any intensive work done on this phase of the personnel problem would in large part merely duplicate and repeat what other associations such as the American Association of University Professors are doing on a

larger scale. We decided, therefore, to refer to other studies for the general materials, and to discuss briefly only two small points.<sup>34</sup>

First, how do the salaries and ranks of political science teachers compare with those of other teachers in liberal arts colleges? In a study of the land-grant universities and colleges a few years ago, history and political science were grouped as one department for the purpose of reporting salary data.<sup>35</sup> It was found that for professors the average salaries in history and political science were higher than those in any other department. Economics was a close second, and the spread between highest and lowest in arts and sciences departments was less than ten per cent. When the other ranks were considered, political science and history teachers did not fare so well, and in the average of all salaries psychology was slightly ahead. This study covered, of course, only one type of institution, but the probabilities are that in other arts and sciences departments or colleges political science teachers stand relatively about as high.

Second, on the economic condition of recent Ph.D.'s in political science we have fairly definite information as of the early part of 1933. At that time, 71 registrants in the placement service answered our questionnaire. Of these, 47 then had employment, and 24 were unemployed. Of the 47, 18 had only temporary employment, generally in connection with universities, and expected to be out of employment by about July 1, 1933. Of the others, 16 had regular teaching positions, 3 held fellowships, two held research positions, one held a public office as a city judge, and seven others had found employment outside of the field of their training. Of the 24 who were wholly unemployed, six had been without political science positions for two years. Those who held college and university appointments were in general fairly well paid, having salaries, with two exceptions, of from \$2,000 to \$3,500.

Aside from these indications of special conditions, our informants revealed that political scientists were being affected by the deflation in the colleges much the same as their colleagues in other departments. There had been many salary cuts, vacancies were not all being filled, there were fewer assistants to grade papers, and there had even been some cases of increased hours of teaching.

#### XVI. THE PLACEMENT SERVICE FOR POLITICAL SCIENCE TEACHERS

One of the first undertakings of the Sub-committee on Personnel was the establishment of a placement service to make contacts between the young men who had finished, or were about to finish, their work for the

<sup>34</sup> See materials referred to in note 14 above. The *Bulletin of the A.A.U.P.* during the past five years has had many items on the subject.

<sup>35</sup> John H. McNeely, *Salaries in Land-Grant Universities and Colleges* (Office of Education, Washington, Nov., 1931), pp. 27.

Ph.D. in political science and the appointing officers of colleges and universities which had vacancies to fill. Several individual members of the Association had tried to do this on a small scale previously. The Sub-committee undertook the work experimentally in 1928-29, and when this experiment proved reasonably successful, established the service on a more permanent basis in 1930-31.

The method of procedure was very simple. After the opening of universities in the fall, all graduate schools and the departments of political science therein were asked to assist in getting all young men recently graduated with the Ph.D. and still unemployed, and all men expected soon to obtain their degrees, to fill out personnel information blanks and to file them with the placement service.

The information thus received from each candidate was condensed into a short statement giving his full name, address, date and place of birth, educational record from college through graduate school, major fields of interest, subjects prepared to teach, Ph.D. thesis topic, positions held, honors won, experience, etc., and in conclusion the names of at least three references. These statements were classified into groups such as (1) candidates who already had the doctor's degree, (2) candidates expecting to obtain the degree in the current year, and (3) candidates with less preparation, were arranged alphabetically within groups, and were mimeographed for mailing to appointing officers.

Some of the mimeographed lists were distributed at the annual meetings of the Association in 1928, 1930, 1931, and 1932. Most of them were mailed out, however, in the following January or February, to the colleges and universities of the country, together with a circular announcing and explaining the service, and offering further assistance, if desired, to any appointing officer having a vacancy to fill in political science. Several times almost a thousand institutions were thus circularized, although as a rule the list was sent to only about 600 of the larger and more important colleges. Follow-up letters were also sent out during the late winter and spring months as reminders of the service, and some supplementary lists were distributed. One year, some hundreds of leading high schools as well as colleges were circularized.

The procedure was so arranged that any appointing officer scanning the list and finding some likely candidates could write directly to them and their sponsors without clearing through the personnel service. From many sources, information came to the Sub-committee that this was done in a number of cases, and that appointments resulted in this way. Unfortunately, there was no record of such results in the files of the placement service, and no exact number of such appointments can be recorded.

In a smaller number of cases, the appointing officers wrote to the placement service for further information. Precautions had been taken to ask

all candidates on the lists to file in the service letters of recommendation from their sponsors, and some had responded to this suggestion. When a request came in for a man with a special training or to teach particular subjects, the files were scanned, from four to six of the more suitable candidates were selected, all available information on these candidates was sent to the appointing officer, and the candidates themselves were asked to take other steps to support their candidacy or to withdraw it if they were not interested. All told, the number of such inquiries was not over ten in any one year. All of them were promptly handled, and some resulted in appointments from our lists.

The placement service offered to handle in a more confidential manner the cases of men already holding appointments who for one reason or another desired to find more suitable positions. Only a small number filed their credentials in this confidential exchange, and very little resulted from it.

The reasoning which led to the establishment of the service can easily be stated. During 1927 and 1928, departments of political science were growing rapidly. There was no shortage of qualified candidates for appointment, for indeed the year 1928, when the service was first established, was the very year in which the number of new Ph.D.'s in political science reached a peak. What was lacking was a central clearing house for helping colleges to find the best men. In so large a country, the best the head of College A could usually do was to write to University W or University X for suggestions. It was impossible for him to canvass all the best available material. His selection was necessarily somewhat hit or miss, and a matter of chance.

It was felt also that since political science is so often a minor field in some other department, the usual tendency was to select a teacher of history or of economics and to ask him to give one or two courses in government as a part of his work. Those in the Association who considered the matter thought that this unfairly doomed political science to remain a minor interest, whereas if more men adequately trained in political science could be appointed, even though they taught also some other subject, their special interest would have more chance to grow and assume its proper place in the curriculum.

Another reason urged was that many colleges were not fully aware either of the subject of political science or of the fact that so many well trained young men in the field were available for appointment. This it was felt probably had unfortunate effects on the colleges and their students, since they were not getting into their curricula the subject of government or on their staffs men adequately prepared in that field. No teachers' agency or university appointment office had any interest in placing a man trained in one field as against one trained in another in any

particular position. It was felt to be a legitimate service of the Association to call to the attention of college deans and heads of social science departments the fact that men thoroughly trained to teach government were available.

For the Association as such, one value of the placement service was seen to be its power to develop among all young political scientists a friendly feeling toward and an active participation in this, their principal subject-matter society. If by this service young men could be helped to procure desirable positions inexpensively and they in turn would work into the Association and labor to promote the best interests of political science through it, both the Association and the young men would benefit. Older men in the Association who, as chairmen and head professors in departments, occasionally have to seek young colleagues would also gain as a result of the service, as would also the colleges in having a wider selection of candidates and some assistance in making a wise choice. In fact, it is difficult to see how anyone, except some private teachers' agencies, could possibly be injured by the service, whereas the interests of education might be materially promoted.

The arguments for establishing the placement service are probably as sound today as they were at the beginning. At the same time, the results have not been all that were expected. The service was something of a novelty, and it was unable quickly to break in upon established methods of locating young teachers. The traditional practice of certain colleges in finding their younger faculty members at certain large universities is not easy to change. In its methods, also, the service was new, and it is not certain whether the lists of available men sent to appointing officers did not in part defeat their own purpose. Certainly the last one was a long and formidable document. Long as they were, the lists were not sufficiently comprehensive, since some men did not submit their records.

Unquestionably the most important factor in diminishing the effectiveness of the placement service was the depression, which began to affect the colleges immediately after the reestablishment of the service. In the past few years, it was something of a success to find any positions whatever for young men, and this the service certainly did, though only for a small number. When questioned in 1933, 47 of 71 registrants who replied said they had positions of one kind or another. Of these, 11 thought the placement service had been most helpful in finding positions for them, nine gave most credit to their university appointment offices, nine gave credit to commercial agencies, and 14 received most help from their own teachers and friends, while a few did not reply on this point. It was the almost unanimous opinion of those who replied that the service should be continued, and many suggested new or enlarged activities for it.

With its transfer to the office of the secretary-treasurer of the Associa-

tion on July 1, 1933, the placement service enters upon a new phase of its development. It logically belongs in that office, and there is every reason to believe that, with certain changes in method already initiated, its opportunities for service and its chances of success are greatly improved. It will be watched with interest by members of the Association, for it is of course not yet fully settled that such a service should be continued indefinitely. This point will be referred to again in a later section.

Another problem for American colleges and universities is that of filling the more important vacancies for which scholars of maturity are desired. The placement service has done very little as yet in this direction. In Great Britain, it is customary to advertise such vacancies and to ask for applications. In this country we follow other methods, not always with good results. This may be a problem not for political science alone, but for the college teaching profession and college and university administrators in general.

#### XVII. PROFESSIONAL INTERESTS OF POLITICAL SCIENTISTS

Is the teaching of political science in colleges and universities a distinct profession? The answer would seem to be in the negative. Standing by itself, the fraternity of political scientists is numerically too small to claim a place as a complete and distinct profession. The physicians of the United States number over 150,000, the dentists 67,000, the lawyers 140,000. In comparison with these large groups, the political scientists are numerically insignificant. A doctor and a lawyer will usually be found in any community of five hundred or more inhabitants, a political scientist only in connection with a fairly large college or university and usually in a large community.

The direct service rendered by the political scientist and that for which he is paid is usually college or university teaching, although administrative work, research, and other services may also be expected from him in varying amounts. In these respects, the political scientist is not essentially different from the college teacher of Latin or astronomy or economics. In short, the profession to which most political scientists belong is that of college and university teachers in general, numbering over 70,000. In so far as professional interests are concerned, then, political scientists would probably do well in the long run to band themselves together with other college and university teachers. A professional association which represents all such teachers in matters which affect the profession as such will be stronger and more effective than a separate professional association of political scientists. Such a general professional association the American Association of University Professors is or is able to become.

This suggests that a clear line of demarcation needs to be drawn be-

tween the functions of the American Political Science Association and those of the A.A.U.P. In fact, such a line has been drawn. The A.P.S.A. is a subject-matter society. Its members are jointly responsible for research and the promotion of knowledge in the field of political science. The holding of conferences on subject-matter and on teaching and research methods, the publication of a review in the field, and the promotion of research, teaching, and publication in political science are the essential functions of the A.P.S.A.

Every political scientist has, then, an interest in a scientific subject-matter. He is also a teacher or research worker with a professional or vocational interest. As such, he is interested in his tenure or right to hold his position as a teacher, in his salary and other emoluments, in the conditions under which he works, and in particular he is interested in academic freedom. None of his teacher-colleagues has more, and very few others have as much, interest as he in the maintenance of complete freedom of teaching and research. On the whole, however, these are subjects in which all college and university teachers have a common interest, though in varying degrees. A general professional society such as the A.A.U.P. is the logical type of organization for these purposes.

There is a borderland, a twilight zone, in which the division of functions is not so clear. The problems assigned to the Sub-committee on Personnel fall partly in this zone. First comes the problem of training for teaching, and the related problems of degrees and degree requirements. Second, there are the problems of recruitment and placement of teachers and research workers. Then there are certain problems of conditions established for teaching and research. In each of these cases there are the more general phases of the problem—those in which the general professional society is interested—and there are the particular aspects of the problem which affect political scientists alone or almost alone. Training for teaching or research in political science is, after all, different in many respects from training for teaching or research in economics, or English, or mathematics. The placement of men in positions also presents its particular problems to political scientists. In many cases there is a competitive element involved. Shall a certain type of teaching or research or public service position be filled by an economist, an historian, or a political scientist? To get the most considered answers to some of these questions, a subject-matter society like the A.P.S.A. must to some extent deal with problems which are, in their general aspects at least, assigned to the A.A.U.P.

Several particular questions of no little difficulty arise. Both the A.A.U.P. and the A.P.S.A. are now conducting placement services for locating teachers in college and university teaching positions. One covers the whole field, the other political science alone. Is there room and need for both, or must one give way to the other type of agency? It is interesting

to note that an earlier attempt to set up a general placement service for all college and university teachers failed to achieve any success. Those in charge of it clearly did not, and could not, have the knowledge needed for giving the best advice on personnel in each of the special fields concerned. This would seem still to be true.

The secretary or some other officer of the A.P.S.A. can obtain the information needed to give fairly expert advice on placements in political science. If the Association adopts the policy of attempting to place political science teachers in institutions now lacking them, and of opening up new research and public service positions for political scientists, its own placement service will be necessary. Finally, it can by rendering this service to its younger men increase their interest in and attachment to the Association. A close and constant attention to personnel and placement problems would seem to be a most wholesome activity for the Association to continue. The American Sociological Society has recently reached a similar conclusion concerning its own field of work, and it now conducts its own placement service.<sup>36</sup>

A similar conclusion is reached also concerning the study of (a) the recruitment of young men before they begin graduate study, (b) the training they receive, and (c) the requirements for degrees in this field, both graduate and undergraduate. A continuous study of these problems is hardly required, but a recurrence to the question at intervals of five or ten years would probably be worth while. There are tendencies and developments in educational practice in political science and related disciplines with which all teachers need to be familiar. A general professional society like the A.A.U.P. will be concerned with common tendencies, but cannot be expected to cover the special problems of each limited discipline such as political science.

#### XVIII. THE OUTLOOK FOR POLITICAL SCIENCE

A man swimming for dear life in the trough between great waves finds it a little hard to see what lies ahead, although he knows from experience what lies behind. At this stage in the depression, it is a bit difficult to forecast anything, even for the immediate future. It probably is much better to ignore the depression entirely and to take a long view back over the progress of political science and to try to construct the next chapter as if the long-time movement were being only temporarily slowed up. This is what some of our more thoughtful correspondents did, with interesting results.

If the interest in political scientists and political science shown today by students, the public, the press, and the government is any indication

<sup>36</sup> See *Amer. Jour. of Soc.*, Vol. 38 (Sept., 1932), for announcement.

whatever, political science is very far from being in its coffin. Many were of the opinion that no immediate increase in the demand for political science teachers could be expected, but that the long-time prospects were much more rosy. A past president of the Association wrote that in his judgment "the public need for men trained in political science is incomparably greater than ever before in the history of our nation. I regard the outlook for men in this field as most promising."

Others, although not quite as optimistic, were full of hope and courage. Most of them agreed that the field of college and university teaching probably could not be much expanded in the near future, but they saw in the fields of research, journalism, public service, and the great realm of unofficial public service, opportunities for competent political scientists far beyond any yet developed. The rise of the fraternity of political scientists in America has been steady and rapid for over fifty years. For most of the men in this field, the greatest depression in history has been only a mild recession. With even a partial revival of industrial activity and prosperity, there should come a new upward trend.

But it will not come in the old way. College and university teaching must not be looked upon as the sole outlet and the only occupational opportunity for political scientists. It is necessary to test every other possibility, and to exploit all the new types of openings which seem to have promise. Of these, in the new America, there will certainly be an increasing number.

# DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES<sup>1</sup>

COMPILED BY GRAYSON L. KIRK

*University of Wisconsin*

## POLITICAL PHILOSOPHY AND PSYCHOLOGY

- Arnold A. Allan*; A.B., Iowa, 1930; A.M., *ibid.*, 1931. The Party Principles of the Hoover Administration. *Iowa*.
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## INTERNATIONAL ECONOMIC COÖPERATION AT THE CROSS-ROADS

S. H. BAILEY

*London School of Economics and Political Science*

International concerted action by states in economic affairs, save in the sphere of communications and transport, has a history of little more than one generation's span. Indeed, apart from the three disconnected conventions concluded before the Great War at Brussels concerning sugar subsidies, the publication of customs tariffs, and the exchange of comparable commercial statistics, respectively, efforts for international coöperation between governments date only from the Peace Settlement. Of the pre-war agreements, the first was denounced before the War; the second, which might still prove of considerable importance when national tariffs become fairly stable, has proved ineffective in a period of violent tariff changes; while the third came into operation only in 1922.

The movement, therefore, with the important exceptions in the sphere of communications and transport, owed its impetus to the work of the Peace Conferences; but save for Part XIII of the Versailles Treaty and the similar provisions of the other treaties—the labor clauses—no specific machinery was established by the treaties either within or without the framework of the Covenant for economic coöperation. In this, as in other respects, the peace treaties probably reflected the state of opinion at the time of their conclusion. On the one hand, the strength behind the claims of the industrial working-class movement, supported by the fears of Western capitalism of the so-called Bolshevik menace, could not be withstood. The plans for an International Labor Organization

for the promotion of international labor legislation were accordingly accepted. On the other hand, outside a small circle of experts, there was no general realization of the possibilities of or necessity for coöperation upon the wider problems of economic and financial organization. Nevertheless, the insertion of paragraph (e) in Article 23 of the Covenant relating to the provision of equality of opportunity for the commerce of all nations at least ensured that one branch of economic life—international trade—would come under the scrutiny of the members of the League of Nations. But it was certainly not foreseen that the casting of this small stone would give rise to the Economic Organization of the League, and ultimately to an extensive series of efforts to reach international agreement on matters stretching to the very limits of the economic system.

Thus the specific field of economic action laid down in the Covenant is represented by the term international trade.<sup>1</sup> This original pre-occupation with commerce has dominated until very recently all the subsequent work of the League in the economic sphere. But the chaotic financial situation of post-war Europe soon imposed on the League the necessity for at least expert consideration of the problems of currency restoration and general exchange stability. The outcome of the Brussels Financial Conference of 1921 was the growth of a Financial Organization also totally unforeseen in the Covenant, and the provision of financial relief schemes for Austria, Hungary, Greece, Bulgaria, and other states. The emphasis in the financial sphere was thus at first laid upon currency restoration and stabilization to be realized by the observance of the rules of orthodox finance, above all by the maintenance of budgetary equilibrium leading to a return to the gold standard and, when once the latter had been restored, by ensuring its operation as a self-adjusting mechanism for the international balance of payments. The apparently successful restoration of the greater part of the world's currencies, and of general exchange stability by 1927, represented the partial attainment of these objectives. This made possible the summoning of the first World Economic Conference, which in turn may be said to have represented the peak of the movement to reduce, by successive stages

<sup>1</sup> Other provisions in the Covenant, Article 23(e), relating to communications and transit, while of obvious indirect relevance, cannot be said to be directly connected with the subject of this discussion.

through subsequent diplomatic agreements, the obstacles to international freedom of trade. The Conference, it is true, gave considerable time to the discussion of the problems of industrial rationalization and of agriculture, but the emphasis throughout was laid on, and the attention of public opinion more particularly directed to, the problem of creating a régime of greater freedom for international trade. This bias sprang from that belief in "the system" which characterized for so long and until very recently the approach of the vast majority of experts on economic questions to the issues for which international coöperation has been invited. It seems to have been the predominant conviction of those who were responsible for framing the Report of the Conference, and of the members of the Economic Committee of the League, not only that much of the apparatus of economic protectionism could be swept away by a direct concerted attack upon it, but also that the régime of free trade which would follow would inevitably solve most of the pressing problems of economic organization. Classicism and Cobdenism combined to produce what is admittedly the most authoritative and concise statement of economic liberalism.

But the attempts to translate the propositions of the Report into practice have not so far justified this approach. The reasons for their general failure may be attributed partly to the further break in agricultural prices and the boom in the United States, which were gale-warnings of the crisis to come. There can be little doubt, however, that the stranding of the recommendations of the Report upon the shores of a theoretical Tristan de Cunha were not solely, or even mainly, due to an unforeseen and irresistible act of God, but resulted from failure to decide between two divergent principles of economic organization.

But before an attempt is made to consider this proposition attention must be drawn to the extended scope of the League's financial and economic activities which has now come about. On the recommendation of the principal experts, the Financial Committee began to study the problems of double taxation and tax evasion, which were referred to a special Fiscal Committee appointed in 1928. Between 1926 and 1930, an investigation was made and negotiations took place which resulted in the Convention on Counterfeit Currency in 1930. The investigations conducted by the Gold Delegation into "the causes of the fluctuations in the purchasing power of gold, as well as their effects on the economic

life of nations," marked a further extension. Thus, down to 1931, the financial activity was concerned, first, with the problems of post-war reconstruction, secondly, with removing the inconsistencies of national legislation, thirdly, with preventive measures against a major criminal offense, and, finally, with large-scale expert investigations into the nature and causes of fluctuations of the price-level in terms of gold.<sup>2</sup> Until the accentuation of the crisis toward the close of 1930 and the beginning of the preparatory work in connection with the second World Monetary and Economic Conference, the wider international problems of peace-time financial policy and organization had not been officially considered. The final Report of the Gold Delegation, however, had inevitably to follow a broader sweep and give some indication of future policy with regard to the major issues thrown into sharp relief by the intervening collapse of the financial system of the world. The tone and form of the Report leave little room for doubt, however, of the confidence of the Delegation in the beneficent working of "the system"—the self-adjusting mechanism which formed itself on the basis of nineteenth-century economic conditions—when once it could be restored on conditions satisfactory to the principal economic powers.

It is convenient at this stage to mention very briefly the nature of the activities of the Bank for International Settlements, apart from those connected with liquidation of reparations. Once again, the orientation which has been toward the solution of immediate, restricted, or technical problems, such as the participation in the grant of financial aid to the Credit-Anstalt in Austria, the encouragement of collaboration between the central banks to avoid trans-shipments of gold by depositing gold or bills on the account of the B.I.S. in the vault of the central banks themselves; or to prevent the sterilization of commercial bills under the gold-exchange system in certain countries by a centralization of the deposit of bills in the B.I.S. Indeed, it has been held that the Statute of the Bank, for example Article 26, which prescribes stringent rules for the maintenance of liquidity, are an effective obstacle to a wider and more ambitious activity in the field of international credit. Long-term credits are thus almost beyond the capacity of the Bank, although participation in credits from six months to

<sup>2</sup> For a more detailed account of the activities of the Financial Committee, see Greaves, *The League Committees and World Order*, pp. 81-83.

two years are possible. On March 9, 1931, for example, the Council of Administration of the Bank authorized the president to participate in the bond issue connected with the International Mortgage Credit Bank to be established at Basle. But it is clear that these limited activities did not in any way involve until very recently the official consideration of the major problems of international price and exchange stability or of credit. The first sign of a change of policy may be found in the adoption of a resolution by the Board of the Bank on July 11, 1932, in which the Bank declared itself in substantial agreement with the Report of the Gold Delegation and considered that the conclusions of that Report formed a starting-point for the elaboration of monetary principles to be given practical application in the future. This endorsement may be said once more to indicate a confidence in the working of a predominantly self-adjusting economy.

The Economic Committee of the League has also extended the scope of its investigations. While the first World Economic Conference was occupied mainly with the liberation of international trade, it laid down certain recommendations concerning industrial rationalization. These recommendations were partly used as a basis for subsequent attempts to grapple with the peculiar difficulties of the coal and sugar industries, which appeared to spring from a disequilibrium between productive capacity and effective demand. The former problem was seen to involve a preliminary agreement on hours and conditions of work which was successfully negotiated in draft form in 1931, but which has not yet been ratified. The agreement, known as the Chadbourne Scheme, for the restriction of production in accordance with a quota-system appeared to provide a temporary solution for some of the difficulties of the latter industry. An inquiry into the causes of recurrent economic crises resulted in the special report prepared by Professor Ohlin in 1931 on the course and phases of the world economic depression. But the preparatory work on the agenda for the World Monetary and Economic Conference led to the most notable extension of the purview of the League.

The Preparatory Commission of Experts broke away from the original plan of concentration on the problems of international trade and expressed the opinion that it was no longer possible to make substantial progress by piecemeal measures, that a policy of "nibbling" would not solve the crisis, and that the governments

of the world should make up their minds to achieve a broad solution by concerted action along the whole front. In the Draft Agenda, prepared for the Conference, therefore, the consideration of the problems of monetary and credit policy, of the disequilibrium between prices and costs, of capital movements, was designed to precede, or at least accompany, attempts to remove restrictions on international trade. A change of method, however, does not necessarily imply a change of principle. It would appear from the notes appended to the Agenda that the confidence of those responsible for its drafting in the operation of a predominantly free economy remains unshaken.

International economic coöperation based on a different principle has been proceeding through another institution of the League, i.e., the International Labor Organization. The origins of the Organization are too well known for any description to be necessary here. But it is essential to emphasize the fact that the conception of securing by international agreement for the workers of the world certain conditions of work and certain standards of life can only with the very greatest difficulty be reconciled with the conception of a self-adjusting economic system. The purpose of international agreements on the hours and conditions of work is the creation of a series of social guarantees for what constitutes in most economically-developed countries the vast mass of the population. It was fully apparent before the outbreak of the Great War that the guarantees already acquired in the countries enjoying more highly developed systems of social legislation were in danger either of destroying the competitive economic position of those countries or of being destroyed unless by general agreement they could be extended to countries where hitherto they had not existed. The progressive attainment of this general objective would involve the progressive creation of new or recognition of old islets within the economic system which could not be threatened with submersion by the rise and fall of the tides of prosperity. The battle raging around the justification for the creation of these islets had already been fought out in some countries, was being fought out in others, while in not a few the struggle had hardly begun. Clearly, the rate of progress internationally was from the first almost entirely dependent on the victory of the principle of social control over the principle of *laissez faire* in the different countries of the world. Nevertheless the I.L.O. has proceeded from the Conference of

Washington steadily to pile up a collection of over thirty conventions which constitute the skeleton of a code of international labor legislation. But despite the efforts of the late Albert Thomas, who was once described as the world's leading traveller in conventions, nothing approaching universal ratification has been obtained for the greater part of these conventions. Asiatic and South American countries have ratified only a few of the less important. The United States of America and the Union of Socialist Soviet Republics have ratified none.

But once again, as in the case of the Economic Organization of the League, the experience of the International Labor Organization has shown that the problems of economic and financial organization cannot be dealt with piecemeal. The close contact of the Organization with the immediate realities of industrial maladjustment has combined with the remarkable vision of its first Director to place it in at least as favorable a position as the Economic Organization for seeing the problem as a whole. Above all, through the data upon industrial and agricultural conditions in most parts of the world at its disposal, the Organization is admirably equipped for analyzing the present situation and making at least practical suggestions for lightening the burden of unemployment. This has involved an extension of the purview of the Organization to questions of general financial and economic policy. But once more let it be emphasized that the International Labor Organization has reached this point by quite a different route from the path followed by the Economic and Financial Organization. Thus, the two chariots of international economic coöperation harnessed by the peace settlements—the one driven along the commercial thoroughfares of the Economic and Financial Organization, the other through the dreary desolation of industrial civilization out into the open country—have now arrived at the same crossroads. There is every indication that so far their drivers, who often tend to forget that they spring from one and the same parentage, are still hesitating at the choice of alternative ways before them.

This situation must not be ascribed to any undue lack of pre-science or incompetence on the part of governments. A guess may be hazarded that very few persons indeed realized in 1919, or even before 1929, the fundamental character of the economic and non-economic changes which have been taking place in the world since

the second half of the nineteenth century and their interaction upon social thought and economic organization. It may even be questioned whether at any time since the middle of the eighteenth century modern governments, organized on the model followed by most modern democratic governments, could have grappled successfully with the problems of a world whose foundations were imperceptibly changing. For it is the inevitable fate of governmental systems built up on the traditions of the nineteenth century to be led to follow the line of least resistance and, while grappling with the problems which lie ready to hand, to postpone indefinitely the evil day when decisions on principle have to be taken. Modern government is by the force of tradition, structure, and expediency, opportunistic. But as in the sphere of national security, so in that of international economic coöperation, it is claimed that a decision can no longer be avoided. It is even possible to go further and suggest that unwillingness to take a decision can only involve the abandonment, at least for some time to come, of international economic coöperation itself.

But this international conflict of principle cannot be wholly, or even mainly, explained on institutional grounds. It has already been suggested that the clues will be found in the structural changes and in the conflicts of interest which have been taking place behind national positions. The countries of the world may be divided for the purposes of this paper into three broad categories, distinguished roughly according to whether or not a certain stage of political and economic development has been reached by the country in question. The stage of development may be said to be represented by the recognition of the right of freedom of association and the consequent development of politico-economic groups representative of different social and economic interests. The first group is composed of the states of Europe, with certain exceptions in the Balkan Peninsula and Eastern Europe, of North America and the British Dominions, with the possible exception of the Union of South Africa and Southern Rhodesia; the rest of the world falls into the second group, with the exception of the U.S.S.R., which forms the third group.

*Group 1.* For some few years past, there have been indications that social development in the advanced countries was rapidly approaching a critical point. The growth of a strong working-class movement gradually acquiring separate political representa-

tion and, inspired by ideas distinct from the radical tendencies of progressive-minded liberalism, gave a great impetus to the advancement of claims to equality of opportunity on the part of the less fortunately conditioned classes within each community. The practical realization of these claims, however, either through revolution or isolated working-class action within the constitutional framework from 1880 down to the Great War, was clearly remote. The only possibility of action lay in an alliance with those political elements which displayed a progressive and radical approach toward the social and economic aspirations of the mass of the community. A bridge between Radicalism and Socialism was found in the practical program of "social policy." Acceptance of this program involved sacrifices on either side. On the one hand, the Socialist movement renounced, at least temporarily, any attempt to overthrow the existing economic system based on the principles of private capitalism and individualism, and accepted a policy which involved the building up through constitutional means of social guarantees within the framework of that system. On the other hand, liberal Radicalism descended from its individualist pedestal to make concessions involving so considerable a measure of collective interference and control in various branches of the economic system that the possibility of the adjustment of disequilibria through the operation of what was held to be a "natural" mechanism in a highly dynamic world became more and more remote.<sup>3</sup>

The history of social policy stretches far back into the early years of the nineteenth century, but the movement first felt the air under its wings in the 1880's when legislation establishing social insurance was introduced in Germany. From that time onwards, the principle of "social policy" made its influence felt both directly and indirectly through an ever-widening radius of action by legislative and administrative regulation concerning the treatment of children, the structure of the family, and the combating of poverty. Regulation of the conditions of industrial employment concerning the hygiene of factories and the workers' safety became common. The economic burden caused by accident, sickness, unemployment, and old age was gradually lifted from the shoulders of the

<sup>3</sup> See G. Myrdal, "Socialpolitikens Dilemma," *Social Tidsskrift*, Vol. 8, pp. 99-115, for a penetrating and brilliant analysis of the character and limitations of the compromise between Radical and Socialist ideas.

working-class. The hours of work for children and women and later, for men, at first in certain occupations, but subsequently for industry as a whole, were limited, and in a few countries minimum-wage rates established. Social policy has also begun to occupy itself with the urban and rural housing-supply. The result in many countries is a formidable code of social legislation, accompanied by a complex system of social services which in turn entails a considerable burden of expenditure on central governments and local authorities, and an appreciable addition to the overhead charges of private capitalistic enterprise.

But sooner or later, even at times when the price-level is rising, a point is reached where the Radical allies of the working-class movement find themselves hesitating before a farther advance. That point may be said to be reached when new proposals can only be carried through either by a further addition to the burden of taxation or by tampering with the rights of private property. In times of depression, when the trade-cycle is on its downward course, the stage may soon be reached without the introduction of new proposals. The increased burden of the social services at a time when prices are falling, unemployment rising, and the rhythm of production and distribution slowing down suffices to weaken the bonds of the alliance. A governmental policy for the social services, of continuance without curtailment, once again revives the dormant conflict of ideologies between Radicalism and Socialism.

The events of the last two and one-half years in the countries belonging to this group have demonstrated beyond any doubt the existence of this internal conflict between two irreconcilable social philosophies. The events of the last twelve years have also shown beyond any question, first, that the international recognition of the principles and practice of "social policy" as it has developed in the more economically-advanced countries is impossible so long as the maintenance of that policy in each national unit is dependent upon conditions of relative prosperity created by an economic system based on a series of private calculations of the opportunities for profit; and, secondly, that without the general international recognition and application of these principles, the maintenance of conditions of relative prosperity in these countries is impossible in the face of the potential competition of the industries of countries altogether without, or with only a rudimentary system of, social legislation.<sup>4</sup>

*Group 2.* Many of the countries in which a strong working-class movement has not yet formed itself are also passing through a period of significant change. It is a commonplace that the stimulus to production caused by the Great War and other influences in previously unindustrialized or under-industrialized parts of the world and ultimately fostered, wherever necessary, by governmental protection or subsidies, has brought about a huge extension of productive capacity and a fiercer competitive struggle for markets. In this struggle, whether between economically-advanced countries or between new and old established industrial powers, private interests become identified with national interests and the influence and apparatus of government are brought to the aid of the national producer in his struggle at home and abroad against the foreigner. It can safely be asserted that the efforts of groups of producers of the same commodity in different countries to eliminate the bleaker winds of competition by means of international industrial agreements have not as yet advanced far enough to reduce substantially the rigor of the conflict or to lessen its danger to the general welfare and peace of the world.

The edifice of social policy in the first group of countries, in view of the indefinite time-lag between the growth of industrialization and the appearance of a movement strong enough to carry through a program of social legislation in the second group of countries, is threatened by a danger which has increased rather than diminished since the first International Labor Conference of Washington in 1919. The realization of this cannot but affect any decision upon the choice of the direction of policy.

*Group 3.* It is not proposed here to comment on the changes which the principle of a planned economy has introduced in the U.S.S.R. But it is difficult either politically or economically to conceive of a Russia permanently isolated from the rest of the world. Whatever the eventual outcome of the experiments which are now taking place in that country, it is equally difficult to foresee a time when the Russian people, impregnated systematically from the cradle to the grave with the doctrine of Communism, will accept a return to a social and economic system based primarily on pri-

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<sup>4</sup> The only exception, which is theoretical rather than practical, occurs when a country can offset any diminution of its foreign trade by extending the domestic market for its products without at the same time decreasing the average returns per head of population.

vate capitalistic enterprise. Moreover, there are many indications that even the partial achievement of the program of economic development for the next ten years will place the U.S.S.R. in a position materially to influence the direction of international trade and indirectly, if not directly, the economic lot of at least a part of the world. The basis of the relations of the U.S.S.R. with the rest of the world, therefore, cannot be passed over without consideration in the determination of a final decision.

This analysis, therefore, if it is correct, tends to show that the interaction of external changes threatens to snap the fragile strands of the alliance in economically-developed countries which has produced social policy, and to end the truce between the exponents of two diametrically opposed social philosophies. The effects of such a rupture, if it is allowed to occur, are incalculable. In place of what has come to be regarded by the beneficiaries as a right due to them as part of a system of distributive justice, the workers and a steadily growing section of the community will be offered as a favor those amenities which can be afforded out of the fluctuating income yielded by the returns of capitalistic economic enterprise. The result might well be a complete reversal of the process of advance toward the ideal of social democracy.

But the rupture is inevitable unless it is possible by means of international economic coöperation to restore order where there is now financial and economic chaos and to lay the foundations for a more secure and more adequate economic system for the world as a whole. The foundations for the same building cannot, however, be constructed on two irreconcilable principles. It has been due very largely to this attempt to undo with the left hand what the right hand has begun to tie that thus far international economic coöperation has failed. The time has now come when the governments of the world must decide between an economic system based primarily upon the international recognition of certain fundamental principles of distributive justice and a flexible and self-adjusting economy operated mainly by private enterprise.

However clear the necessity for a choice may be, the forces by which the governments may be influenced in making that choice are incredibly complex and diverse. The problem itself involves economic, political, and even ethical considerations. But of a far more practical and inescapable character are the representations of the diverse interests and schools of thought which claim to be heard and taken into account in the determination of policy. At

the outset, it is necessary to distinguish between (a) those forces which are the product of the present internal social and economic structure of any organized community and (b) those considerations which arise from the existence of separate nationally-organized communities, often with divergent aims and principles. The connection between the two groups will be referred to later, but it is convenient at this stage to consider each separately.

(1) Capitalist economy has encouraged the appearance of vocational interests which tend to solidify as development proceeds and to identify themselves with a peculiar set of principles and aims. In the first place, the producing interests hitherto in the post-war period have been able to exercise a dominant influence over governments, partly by reason of their direct political influence, partly indirectly through the preoccupation of post-war governments with the maximization of the productive capacity of the national economy. The group as a whole is concerned primarily with increasing in some cases and maintaining in others the margin of comparative costs to its advantage and to the discomfiture of foreign producers. They are, then, interested both in reducing, or at least preventing the increase of, costs of production and, in so far as these measures fail to bring about the necessary readjustments for successful competition, in securing measures of artificial aid by tariffs, restrictions, subsidies, and similar means from the government. Producers are, therefore, as a group averse to policies which tend to add further charges to their overhead costs or to increase the weight of national or local taxation, and in favor of any proposals which will increase the variability of the factors of production.

A second group is formed by the banking fraternity. The attitude of a central bank is primarily dictated by its position as the guardian of the national currency against internal and external dangers. Above all, it is determined to avoid the evils of currency inflation and exchange depreciation. This object, in accordance with the principles of orthodox finance, can best be served by the assurance of budgetary equilibrium and the maintenance of a reasonably equilibrated balance of payments. A central bank, therefore, tends to be opposed to any policy which may increase the expenditure of the central government without creating for use *in the same budget* a corresponding increase of revenue, and to the continuance of any policy which may prevent the achievement of budgetary equilibrium. Further, it will tend to discourage

a monetary policy which by disturbing the existing ratio of commodities and services to the means of payment may substantially alter the price-level. On the other hand, it is the obvious interest of central banks throughout the world to secure the acceptance of an international monetary standard which can effectively assure exchange stability and, if possible, stability of the general price level of the world as a whole. Clearly, however, at any given moment, agreement between the central banks of different countries upon the conditions of their acceptance of such a standard will differ with the varying economic and financial positions of the countries involved. Finally, the tradition weighs particularly heavily with the central banks the representatives of which for the most part have hitherto appeared to favor as speedy a restoration as possible of a mainly self-adjusting economy.

The attitude of the commercial banks varies very greatly, not only from country to country, but within the same country, according to the character of the principal interests and functions of the bank. In so far as it seems possible to detect any measure of general agreement, they may be said to favor any measures for the stimulation of new enterprise (credits and loans) and of domestic and international commerce (discount business) which will not threaten the security of the currency or increase taxation.

Thirdly, a large, but in most countries inchoate, group of distributors comprising wholesale and retail traders, middlemen of all types, shipping and other private transport services, and including the allied business of insurance, is interested, above all, in the maximization of purchasing power and of the volume both in value and quantity of trade. It is perhaps significant that very little attention in most countries has as yet been paid to the attitude and interests of this group, which stands in an intermediate position between the producing and the working-class interests. While opposed to an unduly high level of taxation, the distributing group would appear to be conscious of the threat to the maintenance of purchasing power both of a curtailment of social policy and of a too rigid insistence upon budgetary equilibrium when times are bad. Stability bought at the price of purchasing power may on occasion result in crustation and a situation in which stocks will not be liquidated or freights chartered. They therefore tend to favor policies which, first, will consolidate as large a block of purchasing power as possible and encourage in addition the freest possible international exchange of goods and services, and which, secondly,

will not only discourage the growth of monopoly conditions of supply but increase the size of the turnover.

Fourthly, the industrial and agricultural wage-earners are preoccupied, first, with assuring to themselves command over the necessities of life (the means of subsistence) and, secondly, with attaining by successive advances the ultimate goal of equality of opportunity within the community. The division of opinion within the working-class movement upon the means whereby these ends may be attained need merely be noted for the purposes of this paper. We are concerned only with the section of opinion which recognizes the possibility and the necessity of using the machinery of international economic coöperation for these ends. The attitude of this section derives its inspiration from a social philosophy which insists upon the recognition of a series of natural rights to be enjoyed by the individual and upon the ultimate realization of social equality. These tendencies, despite occasional setbacks, have spread steadily, encouraged by the measure of success already achieved, and by the intellectual and moral stimulus of compulsory education. Organized labor, therefore, supports any proposals which may reinforce these guarantees and opposes any measure which threatens to weaken or destroy them. The emphasis is thus laid upon security and rigidity. Experience of the effects of a mainly self-adjusting economic system, moreover, in the general political and economic environment of the post-war period has very largely destroyed confidence in the restoration of freedom of international trade as a basis for economic life in face of the great disparity of social standards in different parts of the world. In not a few countries, the reaction has taken the form of support for measures of national protection.

Finally, consuming interests, which of course may be voiced in one connection by those who have diametrically opposed interests in another, as, for example, the producers of final-process goods, are concerned, first, with assuring regularity of supply of the necessities of life or of production under relatively stable price-conditions, secondly, with the existence of a wide margin of choice of commodities other than the necessities, and, thirdly, with the maintenance of a reasonably stable internal and world price-level. The diversity of forms which consuming interests may take renders it peculiarly difficult to generalize about the attitude struck by consumers as a group in the consideration of problems of economic policy. Salaried or wage-earning consumers—indeed all with

incomes which are not directly dependent upon the earning of profit—tend to support any proposals which will increase the purchasing power of their incomes or at least maintain it, sometimes even at the expense of a sacrifice of part of a protected productive enterprise. An increasing number of consumers, however, have come to realize the value of stability and regularity of supply rather than of cheapness as factors which tend to keep the economic system as a whole on an even keel. In short, the preoccupation of the individual with the necessity of ensuring his own economic security has brought him face to face with the paradox that cheapness in a competitive world whose productive capacity in the course of a generation has rapidly expanded may turn out to be in a very short space of time the most costly burden. Thus in his *Odyssey for economic security* he is led to toy with the conception of a series of guaranteed rights.

This very rough and ready analysis is designed to give some notion of the cross-current of interests which tug the representatives of governments now in this direction, now in that. It is well to remember, however, that the spokesman of a central government has also an interest, economic in form, to defend—the attainment of budgetary equilibrium at a level which will permit the fulfilment of the greatest number of electoral promises without an increase of direct taxation. While keeping this object always in view, a government is confronted with the exacting task of effecting a compromise between these various and divergent interests which will, in its opinion, be approved not only by its immediate political supporters, but by as many different groups within the community as possible.

(2) The accomplishment of this task is rendered less difficult—some would say avoided altogether—by an appeal to certain general political considerations which arise from the conception of the nation-state as an entity distinguishable from other nation-states. As the commonly accepted focal-point of social obligation, a central government assumes the duty of doing its best to serve those ends for the attainment of which the community itself continues to exist. It is concerned above all with the defense of its nationals or subjects against foreign aggression, and with the conservation of the national way of living or culture. The weight of the influence of considerations of national defense brought to bear in the discussion of international economic policy in each country will vary according to its peculiar political, geographical, and

social position. A Danish government will tend to attach far less importance to it than a French one. Moreover, the objects of such considerations may themselves vary—one government may be obsessed by the need for assuring the necessities required for waging defensive war, another by the task of providing that the necessities of life shall be available for its nationals when other states may be at war. Considerations of national security may combine with views on the appropriate form to be given to social development to create a further political criterion—the desirability of a balanced economy in which agriculture, industry, commerce, and if possible maritime enterprise, find their due place. Similarly, racial, and in a few countries religious, doctrines or popular prejudices, such as an aversion to monopoly, may be summoned to aid a government in determining its attitude toward any given set of proposals for international economic coöperation.

What, however, is likely to be the general tendency of the synthetic attitude finally adopted by governments? Subject to the many qualifications which have been either expressed or implied above, it would seem that a government almost invariably so far has been led to reject any proposals which definitely involve a curtailment of the volume or the range of its productive capacity, partly on the grounds of national defense, partly in the interest of maintaining existing social standards. So long as general confidence in the machinery of collective security is wanting, there seems little probability of a change of attitude.

On the other hand, the governments of creditor countries which possess any share in international trade are obviously anxious to encourage a return to freer trade within the limits imposed by the above-mentioned condition. Under existing conditions, it is doubtful whether more than a very slight increase of international trade could take place as a result of agreements concluded on this basis. It is now coming to be realized that the product of international economic coöperation conducted on these premises is very far from affording those guarantees of the means of subsistence and of economic security for which the vast majority of the peoples of the world are consciously or unconsciously striving. For the existence of a series of competitive and uncoördinated national protectionist economies has not prevented the spread of unemployment and the whittling down of those social standards for the protection of which, in part at least, the policy of the national conservation of productive capacity was advocated. By the failure of governments,

therefore, to strike out consistently along either one or other of the two highways, the world's economic and financial system has been allowed to drift backwards and forwards along the paths of least resistance until suddenly it finds itself at the very brink of a bottomless pit of international economic warfare and of universal distress. If disaster is to be avoided and world economy set upon firm ground, the reins must be gripped firmly and the two chariots of international economic coöperation driven together, either along the highway which leads through control to the recognition of a system of social guarantees or along the road which sets out to attain through the operation of a free and self-adjusting economy the maximization of aggregate welfare.

The decision which it is suggested must be taken, and taken soon, therefore, concerns not economic means but social ends, and strikes down to the very foundations of organized society. In view of the tendency of many of the factors to which allusion was made above, it seems doubtful whether governments and the forces which influence their action would be prepared to renounce legislative or administrative control over the conditions in which the processes of economic enterprise are conducted. On the contrary, the orientation of policy would appear to be toward the striking of a new balance between the forces of individualism and collectivism more to the advantage of the latter, a balance which could be justified only by the acceptance of principles of social justice, both as shown by the practice of the most advanced countries of Northern and Western Europe, and as determined on the basis of medical standards. In this event, the international enunciation of a few fundamental principles to which economic conduct should tend to conform would appear to be necessary. A model might well be found in some of the general conventions concerning different branches of communications and transit, which have recognized the existence of, or give rise to, certain rights to be enjoyed by the individuals and groups of all contracting parties without discrimination. Indeed, part of the foundations have already been laid in the thirty-three conventions and numerous recommendations of the International Labor Organization. Institutional changes introducing a more clearly defined and rational division of functions among the three existing organs for international economic coöperation, and ensuring a generally coördinated activity, would seem to be one of the first conditions of genuine progress.

## SOVEREIGNTY AND SOCIAL DYNAMICS

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### I

The ceaseless struggle of opposing ideas is the historical *continuum* of political theory. However concrete the situation which launches a particular conflict, all too often the struggle of ideas continues long after the objective scene of the conflict has moved on to quite different fields, long after new problems have outmoded old solutions, and long after new ways of thinking should have revised or displaced old concepts. This intellectual problem of continuity of ideas and of modes of thought is, of course, no more than the reflection of the larger issue of the liberation of human society from the "dead hand of the past." The solution of this problem is no easy one, entailing as it does careful discrimination and emphasis upon the quality of "deadness," but many reasoned attempts are being made toward this end.

The forms which these attempts are taking in the field of political theory (including the concept of sovereignty, which is the subject of this paper) and of political science in general are several. We have had an increasing, and productive, "realistic presentation of the facts of the governmental process" which has served to deflate such overweening concepts as that of sovereignty. We have had certain political doctrines relegated—or elevated—to the category of "myths," although the immediate effect of this classification upon the potency of the doctrines themselves has not been notable. There has also been an effort to meet the situation by minimizing or eliminating political theory as a part of the field of political science. This latter effort has taken a variety of forms, such as the purely juristic approach to the study of political organization, or the increasing emphasis upon "scientific method" and the "scientific" aspects of the subject. In some cases, it appears in the form of the denial of the existence or the importance of political theories except for students of history, and the denial of their efficacy under any circumstances—although this approach seems to leave unanalyzed the objective facts of human conduct and motivation; nor does it consider adequately the dynamic rela-

tion of intellectual analysis of a problem to intelligent efforts towards its solution.

This search for "objectivity" in all fields of knowledge is one of the significant signs of the times, and upon the degree of its success much hope depends. Therefore it is doubly imperative that the true nature and function of this objectivity be understood. From some quarters we are told that because the essential character of a science is its method, any subject of study can be rendered scientific by the application of the "scientific method." Concerning this, two points need to be stressed. In the first place, application of the scientific method must not be sheer importation. The normal relation of method to subject-matter is that the latter, plus the mind of man, produces, conditions, and makes use of the former; the progress of the natural sciences is due to the combination of the nature of their substance with the objective intelligence and method of the human manipulators, but it is not due to forcing upon subject-matter a method unsuited to it. Secondly, and even more fundamental to our present purpose, it is sometimes overlooked that if there is a *single* scientific method, it cannot be defined in terms of any particular system of procedure or measurement.<sup>1</sup>

Concerning the application of the scientific method to social studies, the point to be stressed is that we have reason to believe that the social sciences not only should, but can, play a greater rôle in the organization of society by becoming thoroughly modernized in method and objectives, i.e., by becoming scientific; but, on the other hand, no amount of arbitrary and forced procedure can substitute for the flexibility of the scientifically trained mind in classifying problems and devising methods for working with them.<sup>2</sup> In the retraction of the social sciences from a metaphysical sub-

<sup>1</sup> One need only mention the variations in scientific method shown in routine laboratory tests, in research, and in the relation of the minds of such men as Eddington and Einstein to their scientific work. In the application of the scientific method to social studies, we have an analogous situation—a similar gradation from a routine process, which utilizes dominantly a more or less complete and mechanical method, to that which is forced to depend to a large extent upon the apparatus and method of a scientifically trained mind.

<sup>2</sup> An incidental benefit that might be expected from this broad and more accurate definition of "scientific method," not narrowed to a particular process or to a particular subject, might be a more general realization that many a physical scientist is a scientist "in but a fraction of himself," and is thoroughly unscientific in his social attitudes.

jectivity to a scientific objectivity, great care needs to be taken to avoid adopting a limited and pseudo-scientific attitude and method—a kind of scientific monasticism in which external events that seem to question or contradict basic assumptions, methods, or conclusions are carefully excluded from affecting the quiet serenity of the atmosphere.<sup>3</sup>

## II

It is with the concept of sovereignty, imbedded within the matrix of the problem analyzed above, that this paper concerns itself. Some efforts have been made to exorcise political science, pure and applied, of this perennial source of difficulty. But even in this fast dimming twilight of the age of reason, the sacrifice of a scapegoat does not for many or for long prove a satisfactory way of absolving society from political sin; and a great deal of energy has been turned to the more productive enterprise of re-analysis and re-interpretation of this fundamental concept—in reasoned endeavors to give it the scientific description which will put it and keep it in its proper place. Much has been done by way of progressive delimitation and more accurate and more concise definition, but more is yet to be done. The fundamental problem is disclosed in the words of a recent contributor to this purpose: "The real problem has never been, historically, the question of the nature of sovereignty; it has been the question of the shifting of the location of such authority as actually was being exercised."<sup>4</sup> The crux of the problem lies, therefore, in the definition of the concept of sovereignty in terms of all of its component factors—a harmonious relating of all of them rather than launching a fratricidal war among them. Such a definition should eliminate the exclusive legal emphasis of a John Dickinson, and at the same time avoid the dilemma of a Laski, who considers an attack upon one phase of sovereignty to be a rejection of the concept *in toto*.<sup>5</sup> The facts which make

<sup>3</sup> An excellent example of the problem of objectivity in the field of social studies and functions is to be found in the discussion and controversy over the nature of the judicial process. The principle involved in this effort is contained in a statement by Justice Holmes: "What proximate test of excellence can be found except correspondence to the actual equilibrium of forces in the community—that is, conformity to the wishes of the dominant power? . . . Hence, the true science of law consists in the establishment of its postulates from within upon accurately measured social desires." *Collected Legal Papers*, pp. 224-226.

<sup>4</sup> P. W. Ward, *Sovereignty* (London, 1928), p. 169.

<sup>5</sup> The dilemma and untenability of Laski's position is seen in his *Grammar of*

sovereignty not an invention but a concept inherent in political organization have been well stated and discussed by Professor Dickinson.<sup>6</sup> He points out that "sovereignty in the legal sense" is "nothing more nor less than a logical postulate or presupposition of any system of order according to law."<sup>7</sup> He admits the possibility of a breakdown in the legal order, but poses clearly the two fundamental questions: first, is a given theorist denying legal order as such or is he attacking abuses under a particular legal order; and secondly, what are the consequences of these two alternatives, and what are the consequences desired?

In this summing up, Dickinson provides the key to the whole problem of scientific method, its limitations and its possibilities, in the social sciences. The first essential in proceeding is to know exactly what is involved, from the point of view of facts and purpose; the second essential—in choosing between alternatives—what are the probable and possible consequences of each, both immediate and more remote.<sup>8</sup> From this point of view, the concept of sovereignty can be made a "scientific" concept; and at the same time, the concept is kept rooted in the realm of human motives, conduct, and value judgments. An adequate political concept or political science cannot limit itself to the sole function of indicating whether or not a legal order exists.<sup>9</sup>

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*Politics* (London, 1925), in which he attacks the theory of sovereignty as though to banish it permanently, only to find it necessary to re-introduce the concept as a part of his positive political system.

<sup>6</sup> An article by Professor Dickinson ("A Working Theory of Sovereignty," *Political Science Quarterly*, Dec., 1927, and Mar., 1928) is a juristic interpretation taken as the primary basis and point of departure for the present one, since it seems to the writer to represent one of the clearest, most scientific, and most concise discussions of the present problem of sovereignty; and it shows clearly where the analysis of the concept was stopped. The problem could be approached equally well by a similar use of such a view as that of Laski. Our analysis and the concept arrived at would be the same in both cases, although the points of view of these two men are fundamentally opposites. These two approaches to the subject are mentioned only as representative of the recent discussions of the problem of sovereignty, and they do not exhaust the specific points of view to be found in these discussions. Other names might be added, such as those of Duguit and MacIver. The present author owes much stimulation to the point of view presented in MacIver's *The Modern State*, although he does not find the treatment of sovereignty adequate.

<sup>7</sup> Dickinson, in *Political Science Quarterly*, Dec., 1927, p. 525.

<sup>8</sup> As is clear, the remote consequences in most cases cannot be dealt with in or by one narrow field of the social sciences, and hence the social sciences can never deal adequately with their problems so long as there is so much narrow specialization and provincialism within the field.

## III

The particular aspect of the concept of sovereignty with which we are concerned here is that of the relation of its juristic phase to the dynamic political and social forces which operate upon it and upon which it operates. Sovereignty is not a purely juristic concept, and the effort to make it such is precisely the source of much of the difficulty and controversy. It is the juristic "unlimitedness" and "absoluteness" which has led absolutists to find it useful because of the facts which were overlooked, and which has led anti-absolutists to find it diabolical because of these same neglected or minimized facts. Every definition of sovereignty in purely juristic terms over-emphasizes one essential element of the concept which is already by its nature static and conservative; and it disregards another essential factor which contributes the dynamic element. The exact point of equilibrium at which these factors come to rest varies with circumstances, and is indicative and descriptive of the kind of political regulation which is being exercised over a given society at a given time. Too often the discussion relates to which factor should determine the definition of the concept. The problem which should command attention is the existing point of equilibrium and whether it is stable or unstable, desirable or undesirable, and what steps should be and could be taken to maintain or remedy the existing situation.

The juristic phase of the concept of sovereignty, as has been said, is its static side, as the institutionalizing of any principle becomes the skeleton of that principle and puts its capacity for action within certain limits. Also, not only is the juristic element the skeletal form of sovereignty, but it organizes and symbolizes in society the elemental cry for security—through which patriotism, love of country, and national honor are brought to bear upon human motives and conduct at the expense of less elemental appurtenances of human life, such as tolerance, sympathy, and respect for one's neighbors; and because of which the growing-pains of social reconstruction are met by the call of "back to law and order." The

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<sup>9</sup> It is true that social relations elude or escape both classification and control because of their complexity and because of their basis in individual and social psychology. But unless our social scientists are ready to carry scientific study and the scientific method as far as it will go and stop there until it is possible to go further, it is futile to hope for as much social advance as is objectively possible; and it is equally futile to expect much of the scientific and rational analysis of alternatives from the man in the street.

World War and its reconstruction period have multiplied the evidence attesting the truth of the statement that "the idea of law and order, when it is aroused, is one of the cruellest things in history." It is perhaps especially imperative that sovereignty be not given an exclusively juristic interpretation in the United States. This is so, because it is just the sociological basis of such legalism which makes us as a people have both the greatest faith in and the greatest ignorance of law as an instrument of social regulation—one of the most lawless social groups with the most unscientific faith in legalistic enactments.

Thus, the effort to simplify the problems of political science by a purely juristic approach serves to simplify only the concepts, while by the same stroke it complicates the problems. As was discussed above, there is a tendency among some social scientists to equate movement with "pure speculation," political dynamics with political metaphysics; so that they utilize an approach and a method which stop movement as a blow at speculation, and which become scientific by an attempt to force a dynamic situation into a static concept.

The relation of the static to the dynamic, of the juristic to the political, aspect of sovereignty has been discussed for nearly half a century under such dichotomies as *de jure* and *de facto* sovereignty, "legal sovereignty" and "political forces," and lately increasingly under that of "legal" and "political" sovereignty. This distinction between legal sovereignty and political forces is only an elaboration of what Austin himself declared to be the case; and it must be stated that it has in part resulted in bringing bodily into general political theory and political science a definition which Austin drew from the field of jurisprudence and applied in that field. It is amazing to find, through all the changes of historical circumstance, social purpose, and intellectual method, a fundamental continuity in the theory of sovereignty from Bodin, Hobbes, and Austin to the twentieth century. The thread of this continuity is the juristic definition in each case—and as has been pointed out, this is the nucleus around which the concept forms, as well as the steel framework for society which in cases of social fire and destruction often towers above the charred ruins. But for the twentieth century to mistake the thread of continuity for complete continuity and to be more juristic than Austin himself is to invite the social chaos and the political anti-intellectualism and retro-

gression which is appearing on many sides. A concept of sovereignty which embodies a dynamic relationship and a point of equilibrium between its component factors cannot guarantee that the equilibrium reached will be a desirable one—but it gives an objective description of the concept as such and a chance to study existing circumstances, possibilities, and alternatives, rather than emphasizing either the conservative or the progressive element to the exclusion of the other. The present period is one in which over-emphasis upon conserving may block, perhaps is blocking, that degree of progressiveness which it is necessary to conserve.

The division of sovereignty into "legal" and "political" has never proved very satisfactory. To the sociological and the reformist mind, it has appeared dangerous to admit anything of the juristic fiction which has played into the hands of conservatives and absolutists; some of them have preferred a qualified allegiance to some kind of "contingent anarchy" rather than risk the consuming unity of sovereignty. While to the juristic mind it has seemed illogical and unnecessary to include such a vague notion as "political forces lying behind legal sovereignty" as a part of the concept; especially as they realized that legal unity is of the essence of sovereignty. Professor Dickinson gives political sovereignty itself a legalistic definition<sup>10</sup> and then quotes approvingly a statement of Willoughby that "it seems unfortunate that the same term, 'sovereignty,' should be applied to two forces so radically different, even though distinguishing adjectives be prefixed."<sup>11</sup> He is aware of the political context in which the legal system operates, but he prefers to retain sovereignty in its purely juristic definition. "History and experience suggest . . .," he says, "that we are greatly in need of a word to designate the definite organ or funnel through which the forces of fact, motive, power, desire, transmute themselves from ineffective formlessness into the form of the specific rules which we wish to distinguish from other kinds of rules by

<sup>10</sup> His definition: "Political sovereignty has reference to the forces, or rather to *some of the forces*, which operate on the juristic sovereign . . ." His point seems to depend upon an extremely narrow definition of "political"; for he follows the above-quoted sentence thus: "For after all, the *political motive*, i.e., the *fear of not being reelected*, is but one of a number of factors which may and probably will influence the minds which compose the sovereign organ when they set about to define the law." (No italics in the original.) Dickinson, *op. cit.*, p. 533.

<sup>11</sup> *Op. cit.*, p. 532, footnote. It is interesting to note that the qualifying adjectives themselves have introduced the civil war which has beset the concept.

calling them rules of law."<sup>12</sup> This is true, but history and experience also suggest that if we define sovereignty solely in terms of the mechanics of its function, then there will always be those, such as Laski, who find it necessary to retaliate by defining it solely in terms of the source of and limits upon its power to fulfil that function. Neither side sees that it is *power* of a certain kind which drives, through *mechanics*, and that therefore these two elements compose the fact and the concept of sovereignty.

#### IV

The central problem of political organization is the organization, for certain purposes, of diversity. This organization postulates a limited unity, but not the complete, organic unity of the "general will" of Rousseau. The extent to which this limited unity does become social and organic unity varies with circumstances, as do the methods by which unity is achieved and maintained—but without that minimum of unity which we call "legal," nothing further could be attained. The concept of sovereignty, as the central concept of political organization, must accurately and adequately reflect this problem entire, and not merely some phase of it. Therefore we can define sovereignty as follows: "Sovereignty is that power within a social unit which decides between the rules and regulations which the organization, and force, of the social unit as a unit will sponsor and those it will not sponsor—that is, which both organizes a social unit into a working political unit and denotes that it is a working political unit." Consequently, the place at which the line is drawn is a variable, and determined by circumstances, while the fact that a line is drawn is a constant, and determined by the nature of political organization as such. Sovereignty does not *cause* political organization; it is merely a concept which describes its essence.

A brief analysis of the factors of sovereignty, contained in the above definition, will make more clear its nature. The basic factor is that "power which decides" denotes that there exists a system in which power is present and decisions are made. Power is the capacity to act. This capacity is not limited to government officials. The capacity of political officials to act is conditioned by the political organization in which they are functionaries—the constitution, the nature of the governmental system, the party system,

<sup>12</sup> Dickinson, *op. cit.*, p. 533.

the extent of the suffrage. Also, there is a capacity in those not in the governmental system to act so as to set limits upon the capacity of officials in conducting the political system. And this capacity of those not in the governmental system depends in turn upon the limits put upon their individual actions by the economic system, the social system, and the political system.<sup>13</sup>

Consequently, the power of political officials to act is a derived one. It flows from two sources: the political source of their office and the power inherent in that office. This derived power is for a specific function, to make decisions (and see them executed) concerning the conduct of the politically organized community. Their function is immediate, not derived, in the sense that it is inherent in their office and in political organization. Therefore, this function, this type of decision, is limited to political organization. No other type of organization can exercise it. But the power of making specific decisions, of exercising this abstract capacity to act in a particular way in a concrete instance, is limited more or less definitely, depending upon the circumstances.<sup>14</sup>

Sovereignty has been conceived in the past as *unlimited in power* rather than *unique in function*. (And it is important to note that this uniqueness serves only to monopolize this one form of social regulation, not all social regulation). That power works, and that it is a conditioned working, is the essence of sovereignty. It is politically and psychologically absurd to say that a "sovereign body" has the power to act in a way in which its members, individually and collectively, cannot act. Whether social conditioning will ever be combined with any considerable degree of social intelligence is another and a moot question. Also, it is possible that social scientists will learn one day that any extensive social planning must fall under that category of fundamental limitations upon organized political authority; at least, it seems probable that we will learn that some things are possible, some are best done in one way and others by a different procedure, and some are impossible or undesirable for the politically organized community as

<sup>13</sup> The latter factor, the political system, needs special mention because even without the limitations resulting from the social and economic system, the very fact that some people are and some are not officials in the mechanics of the political system itself gives political functionaries a superior position.

<sup>14</sup> It is hardly necessary to enumerate the myriad of conditioning factors—the underlying "social climate," the clash of interests, such as big business, the war veterans, the farmers, etc.

such. To contribute toward clearing the way for a maximum use of the possibilities of dealing with the complicated social problems of this age, social scientists may well start by formulating a clear view of the field, the problem, and the method.

There remains to be considered one further factor in the matter of "decision." Decision denotes not only the abstract purpose for which the power to decide in concrete cases exists, but it signifies also *organization*. If decisions are to be made and executed for a social unit, it cannot but work through a form of organization. Therefore, sovereignty is really juristic in part—power unorganized, capacity to act unorganized, could not be conducted over and in the name of the social unit—would not, therefore, be sovereignty. This factor is one the consequences of which have been until recently overlooked, and it is not yet understood in its complete implications. One discovery of the modern state, particularly in the problem of the democratic state, which was slighted or neglected by earlier political theorists and political scientists is the effect of organization upon principle and the difficulty of institutionalizing principle.<sup>15</sup> "Who says organization, says oligarchy," declares one of the first students to call attention to this problem.<sup>16</sup> One illustration of the problem must suffice. A growing fear of the power of the civil service in England is based largely upon the realization of the position to which its function and the power necessary to and inherent in this function are bringing it. In 1929, a committee of Parliament was appointed to "report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."<sup>17</sup> This is a phrase and indicates a situation which at one time would have aroused a furor in some quarters, and would have provided material for the oratory of politicians and the pen of political theorists in defending "sacred fundamental principles" and "fundamental rights of Englishmen" and in attacking "tyranny and corruption." But now there was no especial culprit and no scapegoat,

<sup>15</sup> For example, Rousseau ignored this factor; Bentham looked upon organization as mechanical and static and without effect upon principle other than that intended, and completely effective in that; and the movement toward written constitutions has combined the two errors.

<sup>16</sup> R. Michels, *Political Parties* (London, 1915), p. 418. The book is a discussion of "the sociology of political parties," and so concerns the very basis of democracy.

<sup>17</sup> *Report of the Committee on Ministers' Powers* (H. M. Stationery Office, London, 1932), p. 5.

primarily only a circumstantial development by which the institutional expression of a principle was faulty, and even the principle in its abstract form was being questioned. It is clear, therefore, not only that sovereignty is in part juristic, but that its juristic element plays a rôle of both effect and cause relative to the operation of the power itself.

## V

In conclusion, two points may be stressed as summing up the fundamental problem analyzed in this paper. In the first place, political concepts must be modernized, brought up to date. With the concept of sovereignty, as in the general field of political concepts (such as liberty, individualism, etc.), we are faced with the problem of saving what is good in our inherited concepts, but at the same time making them reflect what greater experience and greater understanding have taught us. We must face the problem heralded by Michels: "Organization is . . . the source from which the conservative currents flow over the plain of democracy, occasioning there disastrous floods and rendering the plain unrecognizable."<sup>18</sup> The issue, both in political theory and in political organization, is whether the principles resulting from a long process of social development must be thrown overboard as "metaphysical," or whether the essence of some of them can be retained and made effective through institutions. In many quarters, again both in political theory and in political organization, there is an impatient movement toward what looks to be, in part at least, intellectual, political, and social retrogression. From thinking that man can completely and rapidly mould his future to suit his desires, we threaten to swing full-circle to the idea that he must submit to the requirements of "natural processes," defined in terms of an authoritarian realism. Political thinking of the modern period has been fundamentally a conflict between metaphysical abstractions—on the one hand, the view which isolated the individual totally from his social environment and his social group; and in opposition to it, the view which emphasized a naturalistic, deterministic social organism, leaving the individual submerged and complete within the group. Neither view adequately reflects reality or the problems of present organized society; both suffer the limitations of the abstract method of the eighteenth and nineteenth cen-

<sup>18</sup> Michels, *op. cit.*, p. 26.

turies—the “in so far as” method, by which “the political theorist studies men in so far as they show common purposes, the economist in so far as they follow separate purposes.”<sup>19</sup>

Such abstractions, such erection of exclusive fences around different phases of man’s activity—and consequently around each of the social sciences—have been discredited by experience, but still enjoy too honored a place in our modes of thought.<sup>20</sup> This is an age in which such abstractions are being thrown into the crucible for re-thinking, new syntheses are being demanded and in part achieved. The closer “meeting of extremes” is a tendency to be observed on all sides—between religion and science, metaphysics and physics, mind and matter, idealism and realism, subjectivity and objectivity. This is being done not by a neo-scholasticism, but by a process of scientific-philosophic analysis and study of the situation and problems of the present age. This “meeting of extremes” must take place as well between some extremes within the social sciences, such as “liberty” and “authority,” “individual” and “society,” “legal sovereignty” and “political sovereignty,” principles and institutions; all must be scientifically rooted in the existing external situation and open to that organization which human society finds necessary and possible. The meeting of extremes, of “two forces so radically different,” in the concept of sovereignty has been analyzed in the preceding discussion—in this “meeting” neither element has been eliminated, but the actual relation between these two component parts of a single concept is made clear, so that we have a working concept of sovereignty which fits the facts and gives all of them, singly and collectively, their proper part in a static-dynamic concept.

As has been stressed throughout, theory is not opposed to fact, but instrumental to the handling of a factual situation or problem. The purpose of modernizing the theory of sovereignty is to make it truly instrumental as the central concept of political organization. The above paragraph has summed up the theoretical side; it remains only to sum up the practical. This is an age of synthesis in

<sup>19</sup> It is this same type of division whereby the political functionary as a part of juristic sovereignty enjoys “unlimited power,” but the same official as affected by political forces or political sovereignty is limited in his capacity to act.

<sup>20</sup> The point need not be labored that the necessary specialization into different fields is a fact quite different from the chauvinism which leads each to claim complete independence of the others.

theory, of reconstruction in social fact and organization. It has become increasingly evident that the arbitrary division during the nineteenth century between "political" and "economic" does not meet modern facts or modern needs. Society is political in a real sense, a positive sense, and not excluding the economic functions.<sup>21</sup> One need only mention the fact that our present "individualism" is not socially productive, and therefore its fruits devour its progenitors; economically, we can produce economic goods sufficient for our population, but politically we have not the organization, the system of distribution, necessary to gear our economic system satisfactorily to its social function. It has been said that our age has demonstrated the supremacy of the economic function; it should be added that it has demonstrated also the woeful incapacity of society to fulfil its political function. The demand of the present situation is for some degree of social and economic planning, i.e., advance in the political capacity of social organization. It is for political scientists, social scientists, theoretical and practical, to survey the field in terms of the circumstances, the problems, the methods of our time. The nature of this step, so far as theory and intellectual approach are concerned, has been analyzed in a concept of sovereignty which we submit is a "working concept" in the real sense.

<sup>21</sup> It is of prime importance to note that a broader definition of "political" is based upon that social function of organization which is inherently "political." Actually, the narrow, nineteenth-century definition of "political" and "economic" has been long since abandoned, so far as our modern government is concerned, under pressure of new problems.

## JEFFERSONIAN DEMOCRACY: A DUAL TRADITION

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From the great mass of Jefferson's writings, letters, and public utterances, it is possible to select isolated fragments in justification of almost any course one chooses to pursue; and the history of his forty years in the service of his country offers almost as various a pattern. Taking his career and his writings as a whole, however, and piecing together from both the broad outlines of a political philosophy, one is struck by what appears to be a dual emphasis: two diverging streams of thought, which seem at first glance to be incompatible, and which have rendered the great democrat vulnerable to the charge of inconsistency so often repeated in his own day as in ours. One of these emphases, and that most apt to be quoted by campaign orators, is on individualism; but the direction and purpose of the other is socialistic.

Both in the abstract system of the philosopher and in the concrete events of the world of action, time has a way of reconciling apparent contradictions. Historical perspective will do much to reveal unsuspected unities, and the point of view from which the inquiry is approached will do the rest. On these we shall rely; but before examining the opposing tendencies in American democratic theory, and seeking to fuse them into a single whole, we must reconstruct briefly the outlines of the Jeffersonian state.

### I

The entire system rests on two basic assumptions, both of which are ethical: that the end of life is individual happiness, and that the purpose of the state is to secure and increase that happiness. Men are more important than institutions, and social good is to be reckoned in terms of human values. The ultimate end of government, like that of science, of art, of philosophy, is to further the material and spiritual well-being of men. From this it follows that government must be responsible to the people, and relative to their will, expressed by a majority of voices; for the state is the creation and the creature of those who live in it. It is an instrument for the better attainment of the individual ethical end, to be altered or abolished when its usefulness is over.

Nature, which has planted in man the instinctive drive to seek happiness and avoid misery and pain, has endowed him also with the means for achieving this goal. Certain things are necessary to a happy life: liberty, security in the possession of material goods, freedom from arbitrary coercion by others. These are natural rights, attaching in equal degree to all, and carrying with them a duty on the part of each individual to respect them in his fellows. Men come together in society because they are essentially gregarious, and are so formed that no one is sufficient unto himself. He can be happy only in the companionship of others. And since in every group, men will be found who will overstep their rights to the injury of someone else, some form of government must be erected having power to guarantee these rights by punishing those who transgress.

The social compact is a legal fiction, used to explain and to limit the power of the state; and its actual embodiment is the constitution, drawn up by representatives of the people, and sanctioned by the approval of the individuals who are to live under its rule. The constitution is in the form of a contract, to which the several members of the society subscribe, setting up organs for making and enforcing the law, and machinery for carrying forward the welfare of the group. It is the fundamental law, constituting the form of the society and preserving it against too rapid change, yet allowing at the same time ample room for growth. The particular type of machinery thus brought into being will be dependent on the type of people to be governed by it, on the resources and character of the country, and on the demands likely to be made upon it; and it will be alterable by those whom it governs whenever it becomes inadequate to its task.

But though there are many conceivable and practical forms of government, all soundly based states must, for Jefferson, follow broadly a general pattern. The best government is no government at all. Only in a community in which there is no political coercion of any kind can the individual enjoy complete freedom. But in all except the smallest and most congenial groups, anarchy means chaos, and in the end control by the stronger and more ruthless at the expense of the weaker. Next best is pure democracy, in which all the people have an equal share in carrying on the affairs of the state, meeting in common council to transact the public business; but this too becomes impracticable when the state passes certain

limits of area and population. The nearest approach to the ideal which can obtain in practice is representative democracy, which Jefferson calls the "republic." In it the functions of the state are carried on by individuals elected by the people for short terms. Sovereignty belongs properly to the people themselves, but when their numbers are too great to permit them to exercise it effectively, they delegate it to certain individuals or groups to exercise for them.

Following the beaten track of democratic theory, from Aristotle's mixed constitution down through Harrington, Montesquieu, and the *Federalist*, Jefferson divides these representatives of the people into three distinct branches: a legislature, consisting of two chambers, the one based on numerical and the other on sectional interests, whose duty it is to make laws and to raise money for carrying them into effect; an executive, preferably an individual, who is responsible for the administration of the law; and a judicial organ to judge and punish infractions of it, and to settle disputes between citizens. These branches of the government are coördinate, and are responsible to the people; and their authority is specifically limited by the constitution, or contract whereby their offices have been created. The constitution also includes various devices for preventing one department from encroaching on the province of any other, and a bill of rights to restrain any department from interfering in the sphere of the individual.

The duty of the individual citizen, however, extends much farther than the mere election of representatives to carry on in his name the actual business of government. He must keep informed, through the press, books, the schools, on the issues of the day, the problems facing his representatives, the laws passed and their import. And he must exercise in person every function his qualifications will permit him to exercise. Government is equally the concern of all the men associated under it, and Jefferson would have declared as feelingly as Rousseau that "as soon as any man says of the affairs of the state *what does it matter to me?*, the state may be given up for lost."<sup>1</sup> Every man is a potential ruler, and should be always ready to assume public office if his fellow citizens place that trust at his disposal; and every man, in office or in private life, should do his part in formulating the will of the group. Good

<sup>1</sup> *Social Contract*, III, 15.

government springs from a common interest in public affairs.

The larger the state, the more remote is the individual from the actual governing power; and there is consequently increasing danger that he will come to regard himself as impotent so far as the affairs of the nation are concerned, and lose interest in them. This danger Jefferson proposes to avoid by organizing the state into an hierarchy of self-governing units.<sup>2</sup> The centralized federal republic is subdivided into states, each with its own executive, legislative, and judicial organs; the state is made up of counties with their own courts and administrative machinery; and the county itself he would reduce to wards or townships, of an area of some five or six square miles. In the ward, each citizen is an active member of the commonwealth, meeting in common council to carry on the business of the community. Thus each man has a personal interest in the actual conduct of affairs, either in his own ward or in one of the higher units of the scale; and at the same time, the more minute details of administration, such as local roads and schools, are placed directly under the supervision of those most concerned.

Jefferson believes, too, that this arrangement will enable the functions of government to be carried on more effectively all along the line. These functions are broadly divided into productive and repressive, the latter being necessary to the preservation of order, and extending to police power and national defense—the protection of the individual or the group from internal or external infringement of guaranteed rights. Productive functions include the regulation or encouragement of agriculture, commerce and industry, public works, education, and in general all that the twentieth century knows as social legislation. Of these, Jefferson necessarily places education foremost; for if government rests upon the will of the individuals grouped under it, and if its end is the ultimate well-being and happiness of those individuals, it becomes a primary duty of the state to educate them, provide them with books and papers, and free them from censorship or control in intellectual matters. It follows also that for the welfare of the whole, the state may upon occasion be justified in restricting the activities of the individual by curtailing his commercial or industrial ventures, or by limiting his property rights. In so far as the state protects private property, it is a repressive function; but it goes beyond

<sup>2</sup> See letters to Adams, Oct. 28, 1813, in *Writings* (Memorial Edition), XIII, 400; to Cabell, Feb. 12, 1816, XIV, 422; to Kercheval, July 12, 1816, XV, 37-38.

this negative attitude, as we shall see, and concerns itself also with its just distribution and use.

## II

It is in his theory of property that Jefferson leans most decidedly toward the social side of democracy; and it is here that he departs most radically from Locke and the English Whig tradition. The word does not occur in the preamble to the Declaration of Independence, and property is nowhere listed as among the "rights of man." Rather, it is definitely excluded; for when Lafayette submitted to Jefferson his *Déclaration des droits de l'homme*, the latter struck out the words *droit à la propriété*.<sup>3</sup> Property is of paramount importance to society, and its preservation is one of the principal objects of government, just as it is one of the primary reasons for entering into a social compact. But "preservation of property" does not imply preservation of inequality in the distribution of property. Just as Jefferson went beyond Locke's theory of rights, he goes beyond his theory of property—and beyond that of Adam Smith, too.

Locke had declared that the "supreme power cannot take from any man any part of his property without his own consent,"<sup>4</sup> a dictum typical of the eighteenth-century attitude, and one which was already a commonplace by the time Locke gave it caste. It means that the law of the economic world is the survival of the fittest; or, in the more classic formulation of Adam Smith, that the individual best promotes the interest of society by following his own interest. The sphere of the state does not extend into the economic realm in which its citizens live and move and have their being. The result of the system, as Karl Marx was in due course to point out, is the concentration of property in the hands of a small and ever-diminishing group, while the great mass of the people are being progressively dispossessed. It is then inevitable that the group possessing economic power will tend to dominate the councils of state to the exclusion of those who are without resources.

That Jefferson saw these results clearly may well be doubted; but he had at least followed the general line of reasoning far enough to be convinced that the power of the state must be used to eliminate at least the more extreme inequalities in property for the social

<sup>3</sup> Chinard, *Thomas Jefferson*, 84.

<sup>4</sup> *Of Civil Government*, II, 138.

good. His draft of the Virginia constitution of 1776 provides for the distribution by the state of all unappropriated or forfeited lands, so that every person "of full age neither owning nor having owned fifty acres of land shall be entitled to an appropriation of fifty acres or to so much as shall make up what he owns or has owned fifty acres in full and absolute dominion. And no other person shall be capable of taking an appropriation."<sup>5</sup> The abolition of primogeniture is a means of breaking up large estates and providing against a class of disinherited younger sons; and Jefferson's bill to abolish entails was the first effective blow at the land-owning aristocracy of Virginia.<sup>6</sup> But in a letter addressed to the Rev. James Madison, rector of William and Mary College, in 1785, he clearly implies that the power of the state to interfere with private property should go even farther than this.

"I am conscious," he writes, "that an equal distribution of property is impracticable, but the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property only taking care to let their subdivisions go hand in hand with the natural affections of the human mind. The descent of property of every kind therefore to all the children, or to all the brothers and sisters, or other relations in equal degree, is a politic measure and a practicable one. Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical progression as they rise. Whenever there are in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labor and live on. If for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided for those excluded from the appropriation. If we do not, the fundamental right to labor the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little

<sup>5</sup> II, 25 (ed. by Ford).

<sup>6</sup> *Ibid.*, 104 ff.

portion of land. The small landholders are the most precious part of the state."<sup>7</sup>

We have here an organic conception of society in opposition to Locke's individualism. The state is a whole, of which the component individuals are parts, and the property rights conceded to each are conditional on their compatibility with the good of the whole. Such a view was not altogether unheard of in Jefferson's day. Before the middle of the eighteenth century, Francis Hutcheson, one of Adam Smith's predecessors in the chair of moral philosophy at Glasgow, had subjected the rights of property to a social limitation;<sup>8</sup> and Joseph Priestley, at the time Jefferson was writing, advanced the principle that the society has a right to use for the common good all property found or acquired within its territorial limits. Jefferson enjoyed the personal friendship of Priestley after the English chemist's removal to America in 1794, but it is hardly likely that he knew his theory earlier than that date. It is, however, reasonable to suppose that he had read Hutcheson's writings early enough to have been influenced by them, even though there is no evidence that he actually was so influenced. There is also a property limitation in Harrington's *Oceana*, which was well known to Jefferson; and the ancient Spartan division of land is detailed in Thucydides, one of his favorite writers. Whether Jefferson found the germ of his view in any one of these possible sources, or developed it independently, the doctrine itself is well in advance of his day—so far in advance that Adam Smith, in terms of it, is reactionary.

Nor is this theory of property the product of a momentary gleam of insight on Jefferson's part, to be put aside and forgotten when the circumstances evoking it had passed. The draft of the Virginia constitution and the bill to abolish entail date from 1776; but in 1807 he was still seeking to limit, on the authority of the state, the property rights of individuals for the social advantage of the whole. In the embargo of that year he laid down the principle of commercial regulation for the public good, which seems entirely consistent with his political philosophy as a whole; and his opposition to Hamilton's financial policy sprang from a deeply rooted fear of the growth of a capitalistic system, and the conviction that it lay within the power of the state to check that growth. Still later,

<sup>7</sup> XIX, 17-18 (Mem. ed.).

<sup>8</sup> *System of Moral Philosophy*, I, 319 ff. (1755).

in 1816, he speaks of the law of "equal inheritance to all in equal degree" as a safeguard against the "overgrown wealth" of a few individuals;<sup>9</sup> and if, at seventy-three, he believes it sufficient in itself, it is presumably because he has found it so in practice, after forty years of its operation in Virginia. It is rather for a later generation, which has seen the steady increase of unemployment in the midst of plenty, to push the principle to its indicated end.

Add to this social-utilitarian theory of property Jefferson's conception of the functions of the state on its productive side, and it becomes obvious that the individualism of the Declaration gives no adequate measure of the man. The individualistic theory of property as held in eighteenth-century England regarded education also as a private enterprise; but in Jefferson's philosophy, both go overboard together. In a day when schools were still a luxury and education the privilege of the few, he proposed universal elementary training at the public expense, and went so far as to advocate in connection with his university a public dispensary where the poor could obtain competent medical service without charge.<sup>10</sup> He labored also for the establishment of public libraries,<sup>11</sup> for the abolition of postage on newspapers "to facilitate the progress of information,"<sup>12</sup> and for the improvement of knowledge and methods through a system of coöperative agricultural societies.<sup>13</sup>

It will be remembered, further, that the policy of internal improvements at government expense was inaugurated by Jefferson, and included a coast survey, river and harbor improvements, and the construction of roads and canals. At the suggestion of Gallatin, Ohio was admitted to the Union in 1802 with the provision that one-tenth of the net proceeds from the sale of lands within the state should be applied to the building of roads from the Atlantic seaboard to the Ohio valley; and in 1806 Congress appropriated \$30,000 for the Cumberland pike, which was to be only a beginning. Public works, the benefit of which would be felt by large numbers of citizens, were within the scope of governmental activity as Jefferson conceived it, even though they might be of doubtful constitutionality; and he sought, as Madison and Monroe

<sup>9</sup> To Milligan, Apr. 6, 1816 (XIV, 464).

<sup>10</sup> See *Act for Establishing Elementary Schools*, XVII, 418 ff; and *Minutes of the Board of Visitors of the University of Virginia*, XIX, 413 ff.

<sup>11</sup> Randall, *Life of Jefferson*, III, 322.

<sup>12</sup> *Ibid.*, II, 681.

<sup>13</sup> XVII, 404 ff.

sought later, to put the improvement program beyond question by constitutional amendment.<sup>14</sup>

### III

From sophisticated New England, John Adams wrote ironically to Jefferson: "Your taste is judicious in liking better the dreams of the future than the history of the past."<sup>15</sup> But the shaft did not strike home. Jefferson built upon ideals, to be sure; but he built also upon facts—facts of which Adams was only vaguely aware. For Adams had never known, as Jefferson and Jackson and Lincoln knew, the American frontier and the men it bred. A governing aristocracy might be possible in the wealthy coastal cities, or among the alluvial plantations of the South; but beyond the rim of the mountains, where the wilderness lay still unconquered, there were no distinctions of class. There men were equal, and better, they were free, developing initiative and self-reliance in their westward march, and settling their differences among themselves without appealing to the courts. Jefferson was himself the product of the first west in American history. He loved the hardy independence of the pioneer, and sought to build something of the pioneer character into his philosophy of the state. Not wealth nor property nor class, but men form the basis of the political order: free men, in whom justice and fair-dealing are instinctive; who labor together for the common good of all, in scorn of selfish aims.

Perhaps the most fundamental criticism of democracy is that men are not like that. Jefferson preferred to believe, because of his own great love of freedom, that free men could not help but be just, sincere, and true. For him, the war of each against all is the abusive rather than the natural state of man—a product of civilization, which might still be eradicated by a wise and impartial government.<sup>16</sup> He could not doubt that men, however corrupt they might become, were fundamentally rational and moral; he could not doubt the ultimate rightness of life. Like the Greek, he identifies the good man with the good citizen; and like the Greek, he holds evil to be error. If men do ill, it is because they do not know the good. The remedy is to teach them, give them free access to information about their affairs, encourage them to discussion.

Democracy has often been refuted, but it has never been silenced.

<sup>14</sup> Channing, *History of the United States*, V, 6-7, 317.

<sup>15</sup> *Works of John Adams* (1856), X, 226.

<sup>16</sup> To Kercheval, July 12, 1816 (XV, 40).

Its difficulties are practical difficulties—it is slow, cumbersome, inefficient, blundering; its decentralization makes for waste and friction; the inexperience and multiplicity of its officers open the way for privilege and corruption. But all these have to do with its machinery rather than with its philosophy. The democratic state is not seeking an ideal of efficiency or of stability. For Jefferson, the primary purpose of government is to promote the happiness, the self-realization, of the individual. This democracy achieves, perhaps to a greater degree than any other form of government; and in so far as it does achieve this, it fulfills its ideal. The rest is of secondary importance.

The chief difficulty with Jefferson's political system on its theoretical side is that of getting the individual into society without the use of force. He argues that some form of social organization is necessary to protect and enforce individual rights; and at the same time, he bases morality on innate social instincts. Logically, these two arguments are incompatible; for a consistent individualism cannot admit instinctive social desires, any more than a natural social order can leave room for unrestricted personal rights. Jefferson gets around the difficulty by putting a social limitation on the inherent rights of men. Rights and duties are in some sense related, and the individual can exercise his own rights only to the extent that they do not conflict with those of others. What results is a continuous compromise between the demands of the individual and the necessities of the society. No one gets all he wants, but everyone gets something; and the welfare of the group as a whole ultimately emerges as the real purpose of the state, the individual end being absorbed in the social end. Jefferson was not writing a philosophy of the state alone; he was helping to create and administer a government. His view was the view supported by the authorities most respected in America, it was upheld by the liberal thought of the age, and it was believed by the people to whom, in the end, the new state had to appeal for support. A perfect government would no doubt be perfectly logical; but the perfect government is as chimerical as the perfect man. In every state, as in every life, there is a measure of paradox, which may perhaps be strength as well as weakness.

Jefferson seeks to resolve the antagonism between individual and society in his treatment of liberty and equality; for it is only by making these two notions complementary that the compromise between personal and social ends can be carried out. Equality for

Jefferson means simply that the state recognizes no distinction between its citizens; and liberty means the absence of external restraint. Now equality itself is a form of restraint; for I am free to act only to the extent that all others in the state may act in the same way, and I am the equal of others only to the extent that my liberty is so limited. Complete individualism implies freedom limited only by personal capacity; but where legal equality is recognized by the state, the restriction upon freedom becomes social rather than personal.

Liberty under these conditions is reduced to the absence of external restraint in so far as it is compatible with the welfare of the group, each individual in the society being regarded as equally free to act within these limits, and equally entitled to protection from the unlimited freedom of others. Since there is no sphere but that of the intellect in which the activity of one may not be injurious to others, freedom reduces in the end to intellectual freedom. Individual liberty means no more than liberty to think, to speak, to worship; liberty to read and write without censorship, and to associate with others for any legitimate purpose. But this is enough. Political growth and social change come slowly, through the introduction and gradual dissemination of new ideas; and the philosophy of democracy is simply a recognition of the fact that ideas will spread and change will come eventually, in spite of the opposition of entrenched privilege and class interest.

Jefferson's wisdom lay in his faith and his trust in men; and this alone is enough to explain the tremendous appeal of democratic thought in the modern world. For men in whom others believe come at length to believe in themselves; men on whom others depend are in the main dependable. Most of us do what we know is expected of us, be it good or ill. The objective of the democratic state is to secure the greatest possible happiness for all its citizens, and it assumes that this end is recognized and sought by the individuals concerned. It treats them, therefore, not as subjects but as partners in a common enterprise; and it lifts them thereby from the ruck of serfdom to the level of human beings, breeding in them independence, initiative, and self-reliance.

The final test of any political philosophy is not the logical but the pragmatic test. The only criterion for judging any theory of the state is the measure of its practical success. The Jeffersonian state was constructed to meet the conditions of a given time and place—to solve the problems of a pioneer people in a vast and undeveloped

country. All this democracy accomplished, perhaps better than any other form of government could have done it. Jefferson succeeded in both his immediate objectives—to justify a separation from Great Britain and to create a government adequate to the people and resources of America. But to build for the future is more difficult, and requires imagination and idealism such as few possess. Jefferson realized the futility of trying to fix in one generation political forms that should be valid for all time. He knew that a static society cannot endure, and his efforts were bent toward providing peaceable instruments for accomplishing the inevitable changes which time must bring. His legacy is not his solution of the political problem, but his realization that the problem must be solved anew in each succeeding era. Our heritage is his faith that an informed and intelligent people can and will work out their own salvation.

#### IV

We have said that the Jeffersonian political philosophy exhibits two distinct tendencies, two divergent emphases, which are superficially incompatible. In affirming the best government to be that which governs least, Jefferson proclaims himself an individualist, and commits himself to an economic doctrine of *laissez-faire*, but he declares also that the welfare of the whole is the proper purpose of the state, and maintains the power of the government to curtail the activities of the individual for the common good. On the side of individualism, the society must be regarded as an aggregate, the members of which are free to seek their own ends as they see fit. On the other side, the group is an organism: the parts, though performing various functions according to their capacity, are equal in importance, and are subject to such restrictions on their personal liberty as the health of the organism may require. The one emphasis leads to economic anarchy and philosophical isolation—to an “age of big business” and to Walden Pond. The other leads to a planned and controlled economy, and to a collective society—to state socialism and to Brook Farm.

It is not accident, nor mere theoretical inconsistency, that brings Jefferson to the cross-roads. The democratic and socialistic philosophies are closely linked, both historically and logically. The inconsistency is rather on the part of an age prone to regard them as at opposite poles. The seed of English socialism, as it germinated in Mill and T. H. Green and blossomed in the Labor party, was planted by Harrington and Locke; and the lineal ancestor of all

modern proletarian movements is the democrat, Jean Jacques Rousseau. Both individualism and socialism go back, to be sure, to Greece; but for our purposes we need not delve so remotely into the past. The rise of individualism as a philosophical doctrine is traceable to the Reformation, and as an economic dogma it is implicit in the Calvinist creed, which has stamped its impress ineffaceably on modern thought. It was economic individualism that brought in its train the revolt against absolutism and the rise of the democratic state.

Now it is this very economic individualism, tending to become more and more ruthless, that destroys at last the democratic order to which it gave rise. Democracy is a protest against political absolutism, which it ultimately replaces with an economic absolutism; and it is against this final consummation that socialist theory in its turn protests. Democracy, without an admixture of socialism, cannot survive the passing of an agricultural order; for the profits of commerce and industry are too large, and the power they give too great, to be compatible with the ideals of personal freedom and legal equality. If the power of the state must be checked, lest it be abused through sheer love of glory, how much more must the power of wealth be controlled, lest it be abused through the still more fundamental love of gain!

Democracy and socialism are alike motivated by the desire to free the individual from oppression, and to guarantee to each an opportunity for personal happiness, for self-realization, for practical liberty and spiritual freedom. Democracy is an attempt to distribute political power among the masses with the purpose of obviating once and for all the possibility of dictatorial control; socialism is a recognition of the fact that political and economic power must and will be identified. The aim of socialism is to recover the democratic freedom, the emphasis on human values, the recognition of personal worth, which a highly mechanized civilization tends to overwhelm.

The differentia of democracy is the sovereignty of the people, through public opinion, which is true of the socialist state alone among other forms of government. The only difference between the two is in fact a difference of emphasis; and unless both emphases are combined, as they were in Jefferson, neither form can hold its own. One is the natural corrective of the abuses of the other. If liberty be made basal, and logically followed, the result is a dictatorship by those who most successfully use their liberty to acquire

economic power. If, on the other hand, equality be made the fundamental issue, the logical outcome is complete communism. If all men acted with unselfish charity, there would be no political problem; but with due allowance for human nature, it seems impossible to set up an ethical code without authority behind it. Since the Reformation, and for some centuries before it, the authority of the church has failed to enforce morality in a commercial world. The alternative is an ethico-juristic code, established by public opinion operating through the channels of representative government, and backed by the power of the state.

Having gone so far, it becomes apparent that the individualistic and socialistic tendencies in Jefferson—and in all sound democratic theory—are no longer incompatible. Both follow from the initial premise of the democratic state: that the purpose of government is to promote the personal happiness of those who owe allegiance to it. This end is impossible without a measure of individual liberty; but it is also impossible if certain persons or groups, through the attainment of economic power, are allowed to coerce for their own ends other individuals or groups. The industrialist, the landowner, the labor leader, are alike subject to regulation and control by the state whenever their activities interfere with the right of others to the pursuit of happiness.

These phrases are vague enough; but political society is an elusive thing, and the rules must not be defined too rigidly, lest they be rudely trampled under foot as the game proceeds. The exact point at which the power of the state must be exerted to curb individual enterprise, the precise line which marks the social good, must be determined by expediency—by the possibilities of the given situation and the circumstances of the hour. When the population is small in comparison with the extent of the national domain, and vast natural resources are only beginning to be exploited, there is enough for all, and individual initiative is the order of the day. But where the proportion of unemployed is large and distribution of economic goods increasingly unequal, the balance of public opinion will swing toward the side of the dispossessed, and the social functions of the state will be emphasized. In general, the older and more densely peopled the country, the more socialistic it will become. The peculiar strength of the democratic philosophy lies in the very broadness of its principles, which makes possible adjustment to a changing social order within the familiar framework of the traditional governmental structure.

## AMERICAN GOVERNMENT AND POLITICS

**Second Session of the Seventy-third Congress, January 3, 1934, to June 18, 1934.**<sup>1</sup> This Congress has been conducted in a crucible. The problems that demanded consideration were the most momentous since the war years. These tangible burdens, weighty and perplexing enough when taken separately, served in the aggregate and under the conditions of the time to test in most exacting fashion the very governmental system itself. The adequacy of Congress as a satisfactory political institution was at stake. Was the presidential system as such competent or even capable of meeting its responsibilities? The leadership of Congress during the special session was sustained in large measure by the impetus to action engendered by the economic crisis. But weaknesses in the congressional structure, hidden by the unifying effect of the emergency period, appeared clearly during the second session. What were the elements affecting Congress as a law-making body, and how did the presidential system withstand the strains of this second session?

*Politics and the President.* Two desires broadly influenced the activities of the session. One was to hasten economic recovery and the other was to win the November election. At the beginning of the session, Republican leaders decided that, in view of the wide popular approval of the Administration, their best policy was to go along with the President. The overwhelming Democratic majority (313 Dem., 115 Rep., 5 F.-L., 2 vacancies in the House, and 60 Dem., 35 Rep., 1 F.-L. in the Senate), the lack of an alternative program, and the paucity of the opposition leadership gave added weight to this stand. Although the temper of the minority party changed during the late spring, this did not notably affect the outcome of the session. With the entire House and about a third of the Senate (17 Dem., 17 Rep. and 1 F.-L.) coming up for reëlection, the strategy of the session turned upon reconciling the interests of these contestants with the Administration program.

No political advantage was to be had from attacking the President. Several general signs tended to corroborate the expressions of popular support that every congressman found in his morning mail. Before Congress had been in session a month, the nation-wide tribute to the President on his birthday showed the sentimental regard in which he was held. The outcome of the April primaries in the pivotal state of Illinois was interpreted as more tangible evidence of the voters' favorable attitude.

<sup>1</sup> For notes on the 73rd Congress, 1st Session, see this REVIEW, Vol. 28, p. 65. For the 72nd Congress, see Vol. 27, p. 404, and Vol. 26, p. 846. For notes prepared by Arthur W. Macmahon on the 71st Congress, see Vol. 24, pp. 38 and 913, and Vol. 25, p. 932. For notes on the 70th Congress, see Vol. 22, p. 650, and Vol. 23, p. 364; and on the 69th Congress, Vol. 20, p. 604, and Vol. 21, p. 297.

The attack on the President's advisers, manipulated according to reliable rumor by an officer of the National Manufacturers Association, left the Chief Executive apparently unscathed. He avoided an appearance of partisanship; he suggested somewhat a constitutional monarch. The Brain Trust might err, but the King could do no wrong. By May, the Wirt investigation had blown over without affecting the President's program, although slurring references were still occasionally made to "Frankfurter's hot dogs" and the "scarlet fever boys from the little red house in Georgetown." The *Literary Digest* poll showed an overwhelming popular support behind the Chief Executive. Yet in the face of this general approbation the President displayed a willingness to compromise with Congress that some commentators found difficult to explain. It seems clear, however, that his tactics were directed not merely toward enhancing his own popularity, but also toward fortifying the political positions of his congressional supporters. He was apparently profiting by the experience of his war-time chief, Woodrow Wilson. If he was to continue to make the presidential system work, he had to guard against the hazard of greatly diminished support in the Seventy-fourth Congress.

*The President and Congress.* At the opening of the session, the President addressed both houses in friendly and intimate fashion. His was not a formal report on the state of the union, but a broad, even vague, statement of aspirations and a personal acknowledgement of congressional coöperation. "Out of these friendly contacts," he said, "we are, fortunately, building a strong and permanent tie between the legislative and executive branches of the government. The letter of the Constitution wisely declared a separation, but the impulse of common purpose declares a union."

To cement and render workable this union was his constant endeavor. He showed a hesitancy to commit himself until the time was ripe for action, and he was willing to compromise in order to maintain cordial relations with Congress. He drove with a looser rein during this session and turned aside from the obstacles he could not surmount.

Seemingly out of courtesy and consideration for his congressional followers, the Chief Executive relaxed his "dictation" during the first few months. But leaving Congress to frame specifically his general proposals resulted in great disagreement between the two houses, and even among members of his own party. This appeared clearly in the fight over regulating the stock exchanges. Upon returning from his vacation in April, the President served notice that he would apply some of the lessons learned "from the barracuda and the shark." He threatened to tighten the slack and attempted to hasten the adjournment of Congress. He did pull Congress out of deep water, not by being a "tough guy" as he threatened, but by bringing the legislators to plot a course of action under his guidance.

The first move after his return was to hold conferences with the House leaders and with important senators. Orders could be issued to the lower chamber, but the President saw the wisdom of coöperating with the chairmen of important Senate committees and with certain senatorial personalities who might endanger his program.<sup>2</sup> Tentative plans were discussed for the remainder of the session. Through conferences of this sort, President Roosevelt during this Congress demonstrated the significance of the presidential office as the only agency for coördinating the work of the administrative branches and the legislature. In practice, he evolved informally a "master-ministry" of congressional leaders, cabinet officers, and executive officials working through the White House. Recognizing and implementing this rather inchoate group of leaders might serve to introduce the coördination now left to personal and informal contacts. The paradox of the present system is that only a conciliatory presidential policy can get the conflicting congressional *blocs* to work together—but then to what end? The President likened his tactics to the play-by-play strategy of the football gridiron, but many congressmen preferred to regard him still as another Moses leading the people to the promised land. The matters upon which the President was obliged to compromise or accept defeat were those where a clear group or regional interest was infringed. The measures that he regarded as basic to the recovery program he fought for, but to obtain his ultimate ends he was willing to offer a *quid pro quo*.

*The Administration Program.* The President suffered more than one set-back during the session, but at its adjournment he found his heritage of authority from the first session greatly increased. The Gold Reserve Act (H. R. 6976) was passed in virtually the form outlined in the presidential message of January 15. The Reciprocal Tariff Act (H. R. 8687), despite the numerous amendments suggested, gave the President the authority he requested in his message of March 2. Although the houses disagreed as to how the Stock Exchange Act (H. R. 9323) was to be administered and margins regulated, the bill as finally enacted on June 1 conformed generally to the design indicated in the President's message of

<sup>2</sup> Those at the conference on April 14 were: Vice-President Garner; Senator Robinson, the majority leader; Senator Harrison, chairman of the finance committee; Senator Fletcher, chairman of the banking and currency committee; Senator Pittman, chairman of the foreign relations committee; Senator Dill, chairman of the interstate commerce committee; Senator Smith, chairman of the agriculture committee; Senator Walsh, chairman of the education and labor committee; Senator McKellar, chairman of the postoffices and post roads committee; Senator Glass, chairman of the appropriations committee; Senator Black, head of the special air mail investigating committee; Senator Clark of Missouri; Senator McAdoo of California; Senator Lonergan of Connecticut; Senator Conally of Texas; Senator Murphy of Iowa.

February 9. His recommendation of February 26 relating to the regulation of radio, cables, and wires were realized in the creation of the Federal Communications Commission (S. 3285).

*Credit.* Following a special message of January 10, Congress promptly amended the Emergency Farm Credit Act of 1933 (H. R. 5790), thereby guaranteeing the principle of \$2,000,000,000 in bonds for refinancing farm mortgages. While Congress was unwilling to follow the Administration altogether in extending the life of the R.F.C. for three years or increasing its borrowing authority by \$1,000,000,000, the Corporation's powers were nevertheless increased in several important regards and its existence prolonged until February, 1935, in a bill (S. 2125) signed on January 20.

Congress readily followed the President's recommendation of March 1 that the government acknowledge its obligation for the bonds issued under the House Owner's Loan Act. The Senate accepted, 40 to 33, the Norris amendment providing that "no partisan test or qualification shall be permitted or given consideration" respecting the personnel of the House Owner's Loan Corporation. The debate on March 15 disclosed the personal discomfiture that patronage problems had caused many senators. Although the President was known to favor the Norris provision, it was eliminated by the House committee on currency and banking. S. 2999 was approved on April 27.

The President on March 19 suggested that loans to the "medium-sized man in industry and commerce" be arranged through twelve special banks. After much debate, Congress finally authorized \$580,000,000 to be made available through the R.F.C. and the federal reserve banks (S. 3487). On May 14, the President urged extending credit to alleviate unemployment by stimulating house repairs and improvements. The argument that Abraham Lincoln built his own log cabin without federal aid was of no avail before the combined pressure of the White House and the building trades. The National Housing Act (H. R. 9620), the "last link in the recovery chain," created a \$200,000,000 Home Credit Insurance Corporation.

*The Departments and Bills.* Two important Administration measures were of special concern to the Department of the Interior. The Taylor bill (H. R. 6462) regulated grazing on the public domain and the Wheeler-Howard Indian bill (S. 3645) provided funds for education, land, and livestock for Indians. Indian organization along tribal lines also was authorized.

Both the Attorney-General and Senator Copeland offered a series of bills to deal with federal suppression of banditry and kidnapping. The President on May 18 approved six of the measures recommended by the Department of Justice.

The Administration's plan for building the navy up to treaty strength

was authorized in the Vinson bill (H. R. 6604). The discussions in Congress turned upon the limits for expenditure and the distribution of the work between federal navy yards and private shipbuilders.

The President's general program was not challenged successfully on the ground of principle or of national policy. Largely due to last-minute pressure, Congress failed to provide for strengthening the federal control of petroleum production which Roosevelt desired. Most of the President's proposals for recovery and for regulatory legislation were followed. The future of the N.R.A. was, however, left for the next Congress.

*Labor.* An effort by the House labor committee to enact a thirty-hour-week bill in the face of General Johnson's disapproval failed. Outstanding was the loss of the Wagner bill, designed to strengthen the collective bargaining features of the N.I.R.A. A substitute measure, S. J. Res. 143, was put through on June 16. Two other important measures were jammed through during the closing hours under strong pressure from the railway brotherhoods. S. 3231 set up a pension retirement system and H. R. 9861 provided a national adjustment board for railroad employees. The delayed maneuvers on these bills seemed not unrelated to the coming campaign.

*Agriculture.* The Administration gave especial consideration to the farmers. The President approved the Bankhead bill (H. R. 8402) providing for the compulsory restriction of the cotton crop and the Kerr bill (H. R. 9690) regulating tobacco production. In a message of February 8, his proposals suggesting quotas for the importation and domestic production of sugar were enacted in the Jones-Costigan bill (H. R. 8861). The Secretary of Agriculture got Congress to include dairy and beef cattle among the basic commodities. Senate amendments prompted by several farm organizations added peanuts, barley, flax, and grain sorghums (H. R. 7478). Why not, it was inquired, add spinach? Senator Long expressed his willingness to vote for "anything else that it is moved to put in; I am for putting them all in" (p. 4052). This summed up in extreme form a prevalent Congressional attitude.

*Silver.* The Administration made a notable compromise with the silver bloc. A silver purchase amendment to the gold reserve bill came within two votes of passage in the Senate on January 27 (Dem. 28 yea, 28 nay; Rep. 14 yea, 17 nay; F.-L. 1 yea). The House considered the silver question on March 19, and by a vote of 258 to 112 (Dem. 233 yea, 38 nay; Rep. 20 yea, 74 nay; F.-L. 5 yea), passed the Dies bill (H. R. 7581). Three days later the President sent his special silver message recommending "legislation declaring it to be the policy of the United States to increase the amount of silver in our monetary stocks with the ultimate objective of having and maintaining one fourth of their monetary value in silver and three fourths in gold." Behind this message lay weeks of negotiation

between the silverites and the Administration. Senator King brought together the senators from the silver states to consider the Dies bill and to formulate a bill of their own. Not to be outdone by the Senate, the House ways and means committee, by adding a fifty per cent tax on silver profits, was thereby enabled to claim jurisdiction over proposals otherwise identical with the provisions of the Senate bill. This measure passed the House on May 31, 263 to 77 (Dem. 246 yea, 6 nay; Rep. 14 yea, 71 nay; F.-L. 3 yea) and the Senate on June 11, 54 to 25 (Dem. 46 yea, 6 nay; Rep. 7 yea, 19 nay; F.-L. 1 yea). While dubbed an Administration measure, it was really the product of hard bargaining between the silver *bloc* and the President together with his Treasury advisers. Senator Pittman, for example, stated: "The President yielded with regard to the mandatory provision about purchasing silver until he got 25 per cent of the reserves, and we yielded on the point that he should not be required to purchase 50,000,000 ounces a month, or any other particular amount." While ready to compromise, the silver group indicated that it was not to be disarmed by voting the President permissive powers that he might never use. Its paper victory during the special session had made it more wary.

*Sectionalism and the St. Lawrence Waterway.* Regional rivalries appeared boldly in the voting on the Administration silver bill, the Dies farm-silver bill, and the Wheeler silver purchase measure. An alignment of East against West appeared in the Senate on the measure to prohibit marginal trading (Dem. 21 yea, 30 nay; Rep. 8 yea, 18 nay; F.-L. 1 yea). The New England senators were unanimously opposed and the majority of those from the Atlantic states. Most of the senators from the mountain and north-west central states were in favor of the proposal. This amendment to the Securities Act was defeated on May 9 by 30 to 48. The eastern seaboard was strongly against the Couzens proposal to impose a ten per cent super-tax on income surtaxes, while support came from the Middle and Far West. The measure passed the Senate, on April 11, by 43 to 36 (Dem. 28 yea, 19 nay; Rep. 14 yea, 17 nay; F.-L. 1 yea).

Sectional rivalry appeared perhaps most clearly in a fight to ratify the St. Lawrence Waterway Treaty. Strong opposition came from all states of the Atlantic seaboard region. The bill was ardently sponsored by the President, but party loyalty had little to do with the outcome (Dem. 31 yea, 22 nay; Rep. 14 yea, 20 nay; F.-L. 1 yea). In a special message to the Senate on January 10, the President said: "Broad national reasons lead me, without hesitation, to advocate the treaty. There are two main considerations—navigation and power."

Where the interests of their state were not affected, Democratic senators followed the President. For instance, the south central states were generally favorable, but Long and Overton of Louisiana put New Orleans shipping first and opposed the bill. Of the ten senators from Ohio, Illinois,

Michigan, Wisconsin, and Indiana, five were Republicans and five Democrats. Eight of the ten supported the President's bill, but the two Democratic senators from Illinois had local considerations of their own. The Senate vote of 46 to 42 failed to reach the two-thirds required for ratification.

*Appropriations.* The President got ready support for his measures granting relief and aid to various groups and sections. The essence of statesmanship here was in curbing the generosity of the politicians. In the budget message he stated: "The excess of expenditures over receipts during this fiscal year amounts to over seven billion dollars. My estimates for the coming fiscal year show an excess of expenditures over receipts of two billion dollars. We shall plan to have a definitely balanced budget for the third year of recovery and from that time on seek a continuing reduction of the national debt."

By the end of the session, the regular appropriations totalled \$3,621,553,438, while the emergency total came to \$3,904,829,428. On June 4, with forty minutes for debate and with amendments banned, the House leaders put through the Deficiency Appropriation bill for 1934 carrying over a billion dollars, largely to be distributed at presidential discretion among relief agencies. On the other hand, the majority leaders met defeat when they attempted to uphold the President's economy program in the Independent Offices Appropriations bill.

*Economy, Veto, and Defeat.* The House leaders felt that a rigid control of procedure was needed to protect this bill. Accordingly, on January 11 the rules committee offered H. Res. 217 which ruled out all amendments except those offered by the committee on appropriations and prohibited amendments to this or to any subsequent appropriation bill that would run counter to the economy plan of the last session. Chairman of Rules Bankhead explained: "The purpose of this whole controversy here today is to have the House deliberately determine for today and hereafter during the remainder of this session whether or not they are going to follow the President's recommendations."

Mr. Snell objected to the rule because it prevented the minority from offering the "usual motion" to recommit the bill with instructions to the appropriations committee. The Speaker ruled that such a motion might be made under the general rules of the House, but that "a motion to recommit with instructions to incorporate a provision which would be in violation of the special rule, House Resolution 217, would not be in order." But H. Res. 217 banned any tampering with that part of the bill relating to the economy program. This was a bitter dose for the opposition, since it prevented that side from stating its position and getting a vote on its proposed instructions to the committee. Thus it could not force a record vote on the restoration of the pay cut.

The Speaker's interpretation of the motion to recommit without instructions was upheld by a clear party vote of 112 to 61. This ruling was characterized by Mr. Snell as contrary to the rules and precedents of the House and as "the most unfair, the most ruthless decision" that he had witnessed in his twenty years experience in that body. As to H. Res. 217, he found it "the most vicious, the most far-reaching, special rule that has ever been brought on the floor of the American Congress."

The Democratic leaders, however, put their rigid rule through by a narrow margin of five votes. Three more Democratic deserters would have brought defeat. The rule was approved by 197 to 192 (Dem. 197 yea, 84 nay; Rep. 0 yea, 103 nay; F.-L. 5 nay) on January 11. A Republican motion to recommit the Independent Office bill was defeated, 240-141, on January 12 and the bill was passed at once without a record vote. In the Senate, the Administration leaders were not so fortunate. By a 41 to 40 vote (Dem. 13 yea, 39 nay; Rep. 27 yea, 1 nay; F.-L. 1 yea), the amendment of Senator McCarran was adopted providing for full restitution of the pay cut on July 1, 1934. By 45 to 39 (Dem. 27 yea, 28 nay; Rep. 17 yea, 11 nay; F.-L. 1 yea) the senators agreed to the Borah proposal for withholding the pay-cut restoration from those receiving more than \$6,000 a year. The Senate, through its amendments, had opened Title II of the bill, the Pandora's box which the House leaders had clamped down by their special rules. When this amended bill came back to the Speaker's table on March 1, the leaders followed an unusual procedure. The custom is to send bills directly to conference by a unanimous consent agreement. In this case, however, the "regular" rules of the House were followed strictly, and the Independent Offices bill was referred back to the appropriations committee for consideration. While entirely "regular," this procedure was so unusual that it occasioned comment and gave rise to a rumor that the bill was to be smothered in committee and the expenses of the independent offices met by a special continuing resolution. The leaders, however, were playing for time to muster their forces and plan a course of action. Two caucuses were held, in which they attempted to bind their followers not to take up these Senate amendments on the floor, but to send the bill directly to conference.

The majority leaders promised that after the conferees had acted the measure would be put before the Democratic caucus for consideration. This failed to satisfy the Democrats and further aroused the Republicans. Finally on March 14, the House leaders introduced H. Res. 299, a special rule to authorize sending the Independent Offices bill to conference without instructions, but the leaders were unable to hold in line a membership determined to go on record in support of specific items of the bill. "I wish that we might for the moment cease to be partisans of the American Legion or partisans of the Spanish-American War veterans or partisans

of the employees or even candidates for reelection as all of us are," Representative Woodrum stated (p. 4612). "I wish we might simply consider a pure question of practical procedure." The members chose rather to consider it a pure question of practical politics and repudiated the motion of the rules committee by 169 to 247. The bill was opened for amendment on the floor and the demands of the organized veterans were frankly written into the measure. The Senate amendments were voted down and on March 14 the House approved Representative Taber's veteran amendment by 223 to 191 (Dem. 202 yea, 97 nay; Rep. 21 yea, 89 nay; F.-L. 5 nay). The lack of leadership in the House at this time was strikingly shown by a vote taken two days later. The House then came within one vote (189 to 190) of accepting the Senate veteran amendments which it had rejected on March 14. The Senate on March 26 gave way to the changes made by the House, only to have the President veto the bill the next day. The inadequacy of our presidential system to maintain a responsible financial program was only too well demonstrated by the House vote of 310 to 72 (Dem. 209 yea, 70 nay; Rep. 97 yea, 2 nay; F.-L. 4 yea) and the Senate vote of 63 to 27 (Dem. 29 yea, 27 nay; Rep. 33 yea, 0 nay; F.-L. 1 yea) in over-riding the veto. Although the Chief Executive offered to compromise, his proposals were ignored. "This bill exceeds the estimates submitted by me in the sum of \$228,000,000," President Roosevelt stated. "I am compelled to take note of the fact that in creating this excess the Congress has failed at the same time to provide a similar sum by additional taxation."

*Revenue.* The President, however, left the onus of taxation strictly to Congress. The attempt of the party leaders in the House to secure special rules for preventing the members from tampering with fiscal legislation suggests a parallel to the procedure in the House of Commons where the ministry will brook no interference with its financial proposals.

On February 21, the House passed (by 388 to 7) a general revenue bill calculated to raise \$263,000,000. Party leaders were chary of taking chances by permitting the complex provisions of this measure, which had occupied the ways and means committee for months, to be torn apart in the rough and tumble of the floor. Mr. Bankhead accordingly brought in a rule (H. Res. 266) which limited debate to sixteen hours and banned all amendments except those having the sanction of the committee on ways and means.<sup>3</sup> The steering committee had given its sanction to the

<sup>3</sup> *Cong. Rec.*, February 14, 1934, p. 2563: "The rules committee was requested to bring in this rule. We did not originate it. We hardly ever originate a proposition for the consideration of a rule. The leadership of this House is behind this rule, and moreover, at this session of Congress we set up in this body on our side a new organization, known as the steering committee of the Democratic organization in the House, and that committee was expected to perform certain functions with

rule. A futile debate brought up the usual protests against robbing the law-makers of their power. The soundest comment was that of a veteran legislator who likened the whole partisan discussion of gag rules to a case of the pot calling the kettle black. The rule was sustained by 241 to 154. In the Senate, important amendments offered by Senators La Follette and Borah were added to the bill on April 12-13. When the measure passed the Senate on the latter date by a 53 to 7 majority, it was expected to bring in sufficient revenue to provide for the congressional generosity to veterans and office-holders. The tricks of procedure while forcing through revenue legislation were inadequate in checking expenditures frowned upon by the responsible leaders. The congressional machine demonstrated its incapacity for coördinated accomplishment under presidential guidance.

The high point in the endeavor to retain control of the House was reached on June 1, when the rules committee brought in an extraordinarily stringent proposal (H. Res. 410). This rule provided that during the remainder of the session it should be in order at any time (a) for the Speaker to entertain motions to suspend the rules; (b) for the majority leader to move that the House take a recess; (c) for the House to consider reports from the rules committee without the usual requirement of a two-thirds vote supporting such consideration.

Several factors influenced this extreme move. The President was anxious to see the end of the session and the early enactment of several important measures which were still pending. The Republicans were accused of obstructionist tactics. Dissatisfied with a ruling by the Speaker in regard to the presence of a quorum, the minority on May 31 forced a series of roll-calls as a gesture of protest. Further time was consumed while the clerk, at Snell's insistence, read the minutes of the proceedings word for word. Tempers were warm when the time came to vote on the rule on June 1. The sergeant-at-arms intervened to avert fisticuffs between two members. Jeers and boos were exchanged across the aisles. But the special rule was passed by 240 to 92 (Dem. 238 yea, 5 nay; Rep. 0 yea, 86 nay; F.-L. 2 yea, 1 nay), and the House surrendered to the leaders of the majority party for the rest of the session. Mr. Bankhead could now secure immediate approval of a special rule by a simple majority vote and force

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reference to questions of party policy and with the management of our efforts here on the floor of the House. Before the rules committee was willing to bring in this rule, realizing the temper of the House upon the rule we brought in to consider the independent offices appropriation bill, we requested that this matter be submitted to the conservative judgment of the steering committee of the Democratic party, to determine whether or not we should bring in this rule."

The rules committee during the session reported 64 special rules. Of these, 58 were passed, three were tabled, two remained on the calendar, and only one was voted down.

through in a few minutes measures that under the ordinary procedure would have taken many hours.

*Minorities and the Discharge Rule.* The struggle over rules of procedure was no sham battle but a grim fight between the Administration forces seeking to carry through a program and strong *blocs* alert to forward their own measures. If the House leaders had a broadsword in the gag rule, minorities had a dagger in the discharge rule. Their weapon was keen, though restricted in its range. Since its "reform" on December 8, 1931, the discharge rule has been used persistently for the benefit of special interests. During this session it was referred to as an asinine rule and its amendment was demanded in the name of "majority government." The Floor Leader and the Speaker attempted during the special session, and also at the beginning of this session, to go back to the old rule requiring 218 signatures on a discharge petition. The existing rule, declared Representative McDuffie "is a millstone about the neck of the majority charged with the responsibility of legislation." On the other hand, its effectiveness in securing legislation has been slight. In practice, the rule has been little more than a device for those desiring to placate minorities by political gestures. Of the 31 motions to discharge committees introduced during the Seventy-third Congress, only six received the 145 signatures needed, and of these only two prevailed. One related to the De Priest resolution (H. Res. 236), passed April 25, ordering an investigation of alleged racial discrimination in the House restaurant. The rules committee allowed the consideration of this resolution as a matter of courtesy, holding that it did not properly fall within the scope of the discharge rule. The House actually voted upon only one motion. This single direct use of the discharge rule was the vote on H. R. 1. providing for the immediate payment to veterans of the face value of their adjusted service certificates. The bill was stigmatized as "a mere vote-getting gesture" and the President's blunt veto threat was read into the record. But the veteran's *bloc* had its way. On March 12, a motion to discharge the committee on ways and means from the further consideration of this bill was passed by a vote of 313 to 104, and after a lengthy discussion largely addressed to the galleries the measure was passed by 295 to 125 (Dem. 231 yea, 74 nay; Rep. 59 yea, 51 nay; F.-L. 5 yea). New England was the only region with a majority of its House delegation in opposition to the Patman bill. A considerable resistance was to be found generally among the Atlantic states, but representatives from the rest of the country overwhelmingly supported the measure. The members of the House interested in H. R. 1 organized a special steering committee to assist in the passage of the bill. "This committee has met regularly and worked very hard," its chairman, Representative Patman, told the House.

The leaders of the majority were apparently reconciled to letting the

veteran's *bloc* run its course, but they skillfully avoided a vote on all other discharge motions. The most interesting under-cover battle of the session was the procedural strategy used to prevent the McLeod bill from coming to a vote. This measure proposed paying off the depositors who had lost money in national bank closings, and its charms as a possible vote-winner apparently made it too great a temptation for the leaders to risk its consideration by the rank and file of the House during a campaign year.

On April 13, a petition was entered for forcing the banking and currency committee to report the bill. On the 23rd, seven legislative days having duly elapsed, the motion to discharge was offered by Representative McLeod. The committee that very morning had already reported the bill, but this merely served to place the measure on the Union Calendar, there to await its turn and probably die of neglect. The question arose as to whether the efficacy of the discharge rule could be turned aside in this fashion. The Speaker ruled that a bill could not be taken from a committee under the discharge rule when that committee no longer had the measure under its jurisdiction. The sponsors accordingly filed at once a petition to discharge the rules committee of a special motion to bring the bill before the House.

A third motion was entered on the Discharge Calendar to secure consideration of H. R. 7430, a bill to establish a six-hour day for employees on carriers in interstate commerce. The committee on interstate and foreign commerce reported the bill, and nothing came of the discharge motion.

But those in charge of the McLeod bill were more active. Their motion to force action from the rules committee was entered on May 31 and under the regular rules would have come up seven legislative days later. On June 1, however, the House adopted the special gag procedure already mentioned. The power given the Floor Leader to "move a recess" instead of adjourning the House meant that he could prolong the "legislative day" indefinitely without reference to the passing of calendar days. This recess plan enabled the Floor Leader to eliminate the seven legislative days required by the discharge rule and thereby scotched the discharge petitions pending. Through this procedural trick, the majority leaders at the end of the session were saved the embarrassment of a direct test vote, not only on the McLeod bill, but also on the Frazier-Lemke bill, which was the fourth bill entered on the Discharge Calendar.

The majority leaders dodged the first three, as we have noted, but they were unable entirely to side-track this latter measure. This bill, H. R. 2855, proposed to refinance farm mortgages and to extend credit to farmers on livestock at a very low interest rate. Its political appeal to the farm belt was clear. Although the gag rule of June 1 came just in time to prevent consideration of it by the House, a less drastic substitute meas-

ure, S. 3580, was passed by the Senate. This McKeown-Frazier bill provided for the scaling down of the farmer's liabilities and for a six-year mortgage moratorium. The constitutionality of the measure was questioned, the Farm Credit Administration was non-committal, and a presidential veto was expected by many. Nevertheless, the measure was put through both houses during the last two days of the session and signed by the President on June 28. The House leaders had to use extraordinary procedural devices for heading off these discharge petitions, each of which was designed to appeal to a clear minority interest. Their failure to outmaneuver the farm and veteran *blocs* demonstrated the difficulties of control with an election pending.

*Conclusion.* This session showed clearly that the representative principle could not be consistently maintained if confusion was to be avoided. A responsible will could be asserted only through skillful use of parliamentary devices for excluding *bloc* wills. But such procedural tricks were of very limited effectiveness. The House broke away over the bonus, while the Senate held. But the Senate opened questions which had been closed to amendment in the House. When *blocs* in both houses worked together, additional veteran benefits and silver legislation were secured. On most bills, Democrats and Republicans were willing to support the President. Considering Roosevelt's record, O. G. Villard concluded that "without too obvious resort to politics or the use of undue pressure, he has played Congress with all the skill of the most expert fisherman with a trout on his hook." President Roosevelt's tactics were adroit, but certainly his fly was more than usually attractive (and expensive).

The appropriations of the session exceeded seven and a half billion dollars. When to this is added the fact that about 89,000 new political jobs were created, the Administration's influence upon congressmen is more easily explained. In March, 1933, according to the Civil Service Commission, there were 110,000 federal positions outside of the classified civil service; by the end of the second session, the total was 199,000. In May, 1934, alone, nearly 15,000 office-holders were added to the federal administrative forces. At the end of July, the Commission reported that a total of about 100,000 new jobs not under the civil service had been created since Roosevelt took office.

The flippant explanation attributed to Al Smith—"Nobody wants to fire Santa Claus"—raises a fundamental question which, although evading a categorical answer from the experience of this past session, at least prompts speculation. The conclusion seems inescapable that the power of the President to guide legislation rested in considerable measure upon his wide discretionary authority over the distribution of funds and jobs; but the relative weight to be given this factor must remain a matter for individual judgment.

The President accepted the principle of vast federal expenditures on public works as a means of speeding recovery. Journalist Hearst and Economist Keynes endorsed the move, as did the majority in Congress. The cost was necessarily high. Although its justification was placed upon economic grounds, the move was certainly politically expedient. It is very unlikely that the Chief Executive could have acted otherwise and still retained a semblance of control over Congress. The great majority that voted to override his veto of the Independent Offices Appropriations bill showed the readiness with which representatives and senators deserted the President when they thought his measures were bad politics for home consumption. The individual congressman could not risk his chances of reëlection; nor could the Administration afford to endanger the position of its supporters.

The President's policy, therefore, was one of compromise and concession directed toward curbing the more extreme demands of regions and classes. These elements appeared in congressional *blocs* backed by organized minorities concerned only with their immediate welfare. To evoke a unified conception of national interest from such warring forces would be difficult under any circumstances, and under our system proves well-nigh impossible. Neither in the presidential office nor in the congressional leaders did sufficient authority reside for imposing the discipline needed to offset the fear of sectional and group interests. The Administration could do little more than keep order in the bread-line that reached into the Treasury.

With the acceptance of the principle of federal fiscal aid for distress and of governmental responsibility for economic rehabilitation, the task of the Administration was to bring relief not only to those demanding assistance, but also to the less articulate groups. The home-owners, the small business men, and the Indians were remembered along with better organized groups such as the farmers, the veterans, the silverites, and the bankers. The inflationists and debtors generally were more insistent in their demands, and more successful as well. Labor, in the face of strong opposition from employers' associations, failed to secure the abolition of company unions. Despite presidential endorsement, Congress postponed consideration of the Tugwell food and drug bill designed for the consumers' benefit, the anti-lynching bill for the Negro, and the unemployment and old age pension measures. Obviously, all of these projects were such as to arouse racial or economic class antagonisms.

During this session, the President showed himself as an astute politician rather than as a crusader. A greater burden was placed upon party officials in Congress. No leaders there were capable of securing command by the sheer weight of their personalities. Control was attempted, with only partial success, through the tricks of parliamentary procedure. Con-

gress represented sharply the many special interests of class and section, and representative government in these terms cost billions. Although the second session exhibited, in the main, a picture of President and Congress working together, it also demonstrated how weak are the devices of responsible leadership and control when strained by the divisive force of organized minorities. Can the presidential system continue as a game of touch and go between the Chief Executive and congressional *blocs* played by procedural dodges and with bread and circuses for forfeits?

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**Is There a Time Limit for Impeachment?** The failure of the recent attempt to impeach the late Governor Horton of Tennessee is of particular interest to students of political science because of the grounds upon which the failure to impeach was justified. The main reason given by many members of the legislature was a constitutional one, namely, that an officer cannot be impeached during his second term of office for high crimes and misdemeanors committed during his first term. Considerable doubt remains as to the soundness of this position, many people thinking that the explanation given was a clever excuse but one that would not justify the failure to impeach.<sup>1</sup> It is interesting, therefore, to ascertain if, in impeachment trials where this point has arisen, a similar position has been taken either by legislative bodies or by the courts.

Like most state constitutions, the Tennessee constitution has only general provisions dealing with the rules of impeachment. The house of representatives impeaches; the senate acts as the court; and a two-thirds vote of this body is necessary to convict. The constitution then lists the officers who may be impeached, and states that impeachment may take place whenever officers, "may, in the opinion of the house of representatives, commit any crime in their official capacity which may require disqualification."<sup>2</sup> The only limit placed on the nature of the offense, therefore, is that it must be committed in the official capacity of the officer. No mention is made of a "term of office"; nor can it reasonably be inferred that it was the intention of the constitution's makers so to limit the liability of the officers of the state.

In glancing over the impeachment trials of federal officers, we discover only one instance in which the Senate of the United States has failed expressly to find guilty an officer charged with offenses committed during a previous term of office. This case was one in which there was

<sup>1</sup> A similar position was taken by Mayor Walker in the hearing conducted before Governor Roosevelt. This case will be considered later.

<sup>2</sup> Art. 5, sec. 4.

a change of offices, and not the holding of the same office for several terms. In 1911, Judge Archbald, of the now defunct Commerce Court, was impeached on thirteen counts.<sup>3</sup> Six of the articles of impeachment maintained that he had wrongfully accepted money while he was a district judge, before he was in any way connected with the Commerce Court. On all charges of crime committed during his term of office as a district judge he was acquitted, while he was found guilty on other charges based upon actions that occurred during the time while he was a judge of the Commerce Court. Senator Stone gave as his reason for voting "not guilty" on the first group of charges: "I have grave doubts as to whether acts committed as an official while holding a given office can, after he ceases to hold that office, be made the basis of impeachment."<sup>4</sup> Other senators held the same opinion.<sup>5</sup>

Unfortunately, the issue was clouded by other considerations. Several senators, e.g., Root, Lodge, and Cullom, who voted "not guilty" did so because they considered that the offenses charged did not constitute crimes and misdemeanors. The charges were vague and uncertain; even the counsel for the defense considered them of minor importance.<sup>6</sup> Some senators also voted "not guilty" as to the charges relating to conduct in the district judgeship for the reason that, since Archbold had already been found guilty on the other charges, there was little point to voting him guilty on charges of somewhat doubtful propriety.<sup>7</sup> The senators named above, and many others, considered, however, that there was no inherent obstacle to trying a judge on charges relating to an earlier tenure of a different office.<sup>8</sup> It must be remembered that there is not a clear analogy between this case and any attempt that might have been made to impeach Governor Horton. The latter was serving his second term as governor, whereas in the Archbold case the attempt was to remove a Commerce Court judge for offenses committed while holding another office.

Another case often erroneously cited in substantiation of the idea that the Senate of the United States has limited its power in respect to impeachments is that of William Blount of Tennessee. Blount was expelled from the Senate, and the House of Representatives later impeached him. He pleaded in defense, first, that a senator is not a civil officer under the meaning of the Constitution, and, second, that he was not himself a

<sup>3</sup> See *Proceedings of the United States Senate and House of Representatives in the Trial of Impeachment of Robert W. Archbald* (Washington, 1913).

<sup>4</sup> *Proceedings*, Vol. XI, p. 1652.

<sup>5</sup> See statement of Senator Simmons and others. *Proceedings*, Vol. XI, p. 1675 *et seq.*

<sup>6</sup> Statement of Simpson, counsel. *Proceedings*, Vol. XI, p. 1510.

<sup>7</sup> Statement of Senator Borah. *Ibid.*, p. 1635.

<sup>8</sup> *Ibid.*, p. 1650 *et seq.*

senator when the articles of impeachment were adopted. His plea was sustained on the first ground alone; accordingly, the ruling in that case is not authority on the question before us.

It might be asked, therefore, if an officer can be impeached after he has resigned his office or after he has severed his official connections. In England, it would seem that an officer can be impeached for any act, at any time, while in the United States we have a few examples of officers being impeached after they were out of office. Secretary of War Belknap secured the acceptance of his resignation by President Grant in order to evade impeachment. The House of Representatives, however, by a unanimous vote started impeachment proceedings notwithstanding the previous acceptance of his resignation. In the Senate he was found not guilty, although a majority of the senators voted guilty. The vote was 37 to 25, and the 25 votes were secured only through strong political pressure. Only 23 of the 62 senators believed that the Senate did not have jurisdiction because of the previous resignation of the officer.<sup>9</sup>

Years later, a case that was in many ways similar to the Belknap case arose in Montana. Impeachment charges were filed against Judge Charles Crum in the senate of that state.<sup>10</sup> At a later date, he sent to the governor a letter of resignation, which was accepted. Two days later, the impeachment trial started. At the outset, a resolution passed the senate "to continue the trial of Judge Crum notwithstanding his resignation from office."<sup>11</sup> It would appear, therefore, that once an official has served his term and quietly returned to private life there is little danger of impeachment. However, when an official resigns in order to evade impeachment, the prevailing American doctrine is that he still may be impeached. The reason for this position is that in most instances when the senate finds an officer guilty of misconduct in office, he is disqualified from ever again holding public office.

Three times, in the history of the states, state officials have been impeached during their second term for offenses committed during their first term of office, and in each instance the senate has declared that it had jurisdiction to try the individual for such offenses. In the early history of Wisconsin, Levi Hubbell, a circuit court judge, was impeached for offenses committed during his first term, although the charges were not brought forward until his second term was well under way.<sup>12</sup> The question of the propriety of such action having been raised, the following resolution was passed by a vote of 19 to 5: "That the court in the trial

<sup>9</sup> *Proceedings of the Senate Sitting for the Trial of William W. Belknap* (Washington, 1876).

<sup>10</sup> *Proceedings of the Court for the Trial of Impeachment in the case of Charles L. Lena*, 1918.

<sup>11</sup> *Ibid.*, p. 24.

*Impeachment of Levi Hubbell* (Madison, 1853).

of impeachment now pending have jurisdiction to inquire into offenses charged to have been committed as well during the former term of office of Levi Hubbell, judge of the second judicial circuit of the state, as into offenses charged to have been committed during the present term of the said office.<sup>13</sup>

When David Butler, governor of Nebraska, was impeached, several of the charges were for acts committed during his first term.<sup>14</sup> After considerable debate upon the question of jurisdiction, the senate unanimously passed a resolution "to investigate acts done in a previous term."<sup>15</sup>

George C. Barnard was reelected a justice of the highest tribunal in New York State, and immediately after his reelection was impeached.<sup>16</sup> Eleven out of the 38 articles dealt with misconduct occurring during a previous term of office. Barnard's lawyers maintained that since he "was reelected, he came into possession of his new office approved and certified by the people as capable and worthy to occupy his position."<sup>17</sup> However, the court held otherwise, for by a vote of 9 to 23 it was decided that the senate had jurisdiction to try the case.

In the hearing held before Governor Roosevelt to determine whether James Walker should be removed from the office of mayor of New York City, the counsel for the defense maintained that Mayor Walker could not be held accountable for acts committed during a previous term. It must be remembered that this action did not constitute an impeachment trial, but only a hearing whereby the governor could ascertain the facts in the case. When the question of the legality of the hearing was taken to the courts, Justice Staley, in a memorandum opinion, held that there was no legal ground on which the judiciary could interfere. In some *obiter dicta* remarks, however, the justice stated: "That the act or neglect justifying the removal must have relation to the administration of the office during the term which the officer is serving has been pronounced and followed by numerous executive and judicial authorities. No greater power should be read into the removal power by implication. The application of this principle precludes the consideration of charges dealing with official acts occurring prior to the present term of office or in the transaction of his personal affairs, not within the scope or affecting official action, unless such action amounts to moral turpitude."<sup>18</sup>

Governor Roosevelt refused to give any weight to this opinion, maintaining that it was not binding upon him, since the judge himself so ruled in another part of the same opinion; that he therefore had the right to

<sup>13</sup> *Ibid.*, p. 77.

<sup>14</sup> *The Impeachment Trial of David Butler* (Omaha, 1871).

<sup>15</sup> *Ibid.*, Pt. V, p. 9.

<sup>16</sup> *Proceedings in the Court of Impeachment of George G. Barnard* (Oswego, 1875);

<sup>17</sup> *Ibid.*, Vol. I, p. 159.

<sup>18</sup> *New York Times*, Aug. 30, 1932.

make his own rules of procedure; and adding that in this case he had decided to consider acts irrespective of the time when they occurred. The governor, however, "differentiated between acts which were known to the electorate when the officer was reelected and acts which were subsequently disclosed after the beginning of the second term. "It is not common sense," he maintained, "to consider reelection an endorsement of these acts when they were then unknown to the electorate."<sup>19</sup>

It must again be remembered that the entire procedure was not an impeachment trial, but only a hearing, and that the rules usually governing such trials apply to a hearing only in so far as the individual conducting the hearing desires to be guided by them. On this particular occasion, Mayor Walker resigned from office before the decision of Governor Roosevelt was announced. It is impossible, therefore, to say that the mayor was held for the acts committed during his first term of office, even though his resignation was the result, as he maintained, of unfairness in connection with the hearing. Subsequent events seem to have lent endorsement to the governor's action, for Mayor Walker's failure to run for reelection, while undoubtedly colored by political reasons, showed a disinclination, on the part of both the mayor and the party leaders, to make the fairness of the hearing an issue.

The doctrine was carried to an even further extent when William Sulzer, governor of New York, was impeached and found guilty of crimes committed, not during a previous term, but before he had taken the oath of office.<sup>20</sup> It was maintained in this case that the governor had, among other things, failed to make a correct and complete return of the sources of his campaign funds while running for the governorship. For these offenses, the court not only took jurisdiction but also removed the accused from office.

A disinterested observer might ask: "Even if this view is constitutionally sound, is it fair?" The lawyer in the defense of Judge Barnard maintained: "It is but fair, therefore, to infer that the intention was to confine the time to the term of office during which the offenses were alleged to have been committed; indeed, any other conclusion would lead to results which could not be sustained. For who can say but that the people knew of the misconduct and these offenses and elected the individual notwithstanding? True, an extreme case might be put of fraud committed on the last day of the term of office, to which office the individual might immediately be reelected; yet who could say that this was not known to the people?"<sup>21</sup> The people, it would appear, passed upon the constitu-

<sup>19</sup> *Ibid.*, Aug. 31, 1932.

<sup>20</sup> *Proceedings of the Court for the Trial of Impeachment against William Sulzer* (Albany, 1913).

<sup>21</sup> Argument of Mr. Beach in the Barnard case. *Barnard Proceedings*, Vol. I, p. 159.

tional fitness of the judge when he was reëlected; "and if you review that judgment, you dishonor the cardinal principle upon which the perpetuity of our government rests."<sup>22</sup>

On the other hand, the purpose of impeachment is to remove a corrupt and unworthy official from office and to disqualify him from holding another public office of honor or trust. Unless action is taken, the individual might remain in office; and, as was contended in the Butler trial, "is it reasonable to hold that the mere swinging of a pendulum past a certain hour on a certain day is to determine whether he may be impeached?"<sup>23</sup> "If we hold to this doctrine," said Senator Gronna, "we should adopt a rule which, if followed in future cases, might make it impossible to secure the removal of a totally unfit officer if he succeeded in obtaining a reappointment or a reëlection to office before the facts of the offenses which he had previously committed became known."<sup>24</sup>

The fact that disqualification from future office-holding usually accompanies removal from office seems to substantiate this view, for the purpose of impeachment is not only to remove an unworthy and faithless official but also to make it impossible for him ever to hold another public office. In the Nebraska case of *State v. Hill*, where the court refused to uphold the impeachment of an ex-official, the opinion of the court stated that "the fact that the offense occurred in the previous term is immaterial."<sup>25</sup> Senator Owen is responsible for the statement that "the time he (the accused) committed the offense is immaterial, if such crimes demonstrate the gross unfitness of such official to hold the great offices and dignity of the people."<sup>26</sup>

Disqualification from office might appear to be a very severe punishment, for the only way the sentence can be removed is by the constitution of a state expressly delegating to a certain body or person the power of removing the punishment pronounced by the court of impeachment. An attempt was made by the legislature of Texas to remove the punishment inflicted by an impeachment court through passing an amnesty act which permitted ex-Governor Ferguson to qualify under it and thereby to remove his disqualification from holding office. The constitutionality of this act was tested when Mr. Ferguson asked the supreme court of Texas for a writ of mandamus which would compel the Democratic state executive committee to place his name on the Democratic ballot in the next primary. The act was held to be unconstitutional by the supreme court because the state constitution both expressly excepted impeachment from

<sup>22</sup> *Ibid.*, Vol. I, p. 190.

<sup>23</sup> Argument of Mr. Estebrook in the Butler case. *Butler Proceedings*, Vol. I, p. 159.

<sup>24</sup> Statement of Senator Gronna. *Archbald Proceedings*, Vol. XI, pp. 1652-1653.

<sup>25</sup> *State v. Hill*, 37 *Neb.* 80, p. 86.

<sup>26</sup> See *Archbald Proceedings*, Vol. XI, p. 1647.

the powers given to the legislature and excluded it from the pardon power there and elsewhere. "The convention, in excepting impeachment from the pardon power of the government, while at the same time providing the method of pardon in case of treason, evidently intended that an unfaithful official should not again be permitted to hold office in this state."<sup>27</sup>

Other states are not so harsh in their punishment, and Tennessee offers to the individual convicted by the impeachment court the possibility of a reinstatement, since in the state constitution itself there is the following provision: "The legislature now has, and shall continue to have, power to relieve from the penalties imposed, any person disqualified from holding office by the judgment of a court of impeachment."<sup>28</sup>

It would appear that any disqualification that might be pronounced by an impeachment court is permanent unless the constitution of a state expressly stipulates the method of removing the disqualification or else a constitutional amendment is adopted. While the punishment might be considered harsh, yet, as the Texas court said, "impeachment is used only in extreme cases. As a rule, the state is long-suffering before resorting to this constitutional remedy."<sup>29</sup>

In conclusion, we see that at times the impeachment of officials for offenses committed during a previous term in a different office has been sanctioned; at times, an officer has been impeached for offenses committed before his induction into office. To be sure, opinion upon these procedures remains divided. But, except in the instance of the Horton case, there has been virtually unanimous agreement that an officer may be impeached during a second term for offenses committed during his first one.

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Organization of the Executive Branch of the National Government of the United States; Changes between March 15 and June 30, 1934. In the December, 1933, issue of the REVIEW, pp. 942-955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. In the April, 1934, issue, pp. 250-254, appeared a supplementary list showing the changes between November 1, 1933, and March 1, 1934. The present list indicates the reorganization effected and new units created between March 15 and June 30, 1934. As in previous lists, mention is made of units only specifically authorized by law or established by the President under general authority vested in him.

<sup>27</sup> Ferguson v. Wilcox, 28 S. W. (2nd) 526, p. 534.

<sup>28</sup> Constitution of the State of Tennessee, Art. V, sec. 4.

<sup>29</sup> Ferguson v. Wilcox, 28 S. W. (2nd) 526, p. 534.

I. *Transfer of activities under general authority of the act of March 3, 1933 (47 Stat. L. 1517):*

Duties in connection with the retirement of employees in the classified civil service transferred from the Veterans' Administration to the Civil Service Commission by Executive Order No. 6670 of April 7, 1934, effective June 6, 1934; effective date deferred until October 1, 1934, by Executive Order No. 6731 of June 5, with the proviso that the transfer may be made effective before that date by order of the Civil Service Commission, approved by the President.

United States Geographic Board abolished and its functions transferred to the Department of the Interior by Executive Order No. 6680 of April 17, 1934, effective June 16, 1934.

Office of Alien Property Custodian abolished and duties transferred to the Department of Justice by Executive Order No. 6694 of May 1, 1934, effective June 30, 1934.

Division of Territories and Insular Possessions established in the Department of the Interior by Executive Order No. 6726 of May 29, 1934, effective July 28, 1934; duties of Bureau of Insular Affairs of War Department relating to Porto Rico transferred to new division.

Centralized disbursing in the Division of Disbursements of the Treasury Department, provided for in Executive Order No. 6166 of June 10, 1933, is postponed by Executive Order No. 6727 of May 29, 1934, as regards offices not heretofore effected until December 31, 1934, with the proviso that transfers may be made effective before that date by order of the Secretary of the Treasury, approved by the President.

Executive Order No. 6166 of June 10, 1933, providing for centralized disbursing by the Division of Disbursements of the Treasury Department, is revoked by Executive Order No. 6728 of May 29, 1934, in so far as it centralizes the disbursements of the War Department, the Navy Department, and the Panama Canal, with the exception of those pertaining to departmental salaries and expenses in the District of Columbia.

II. *New offices created:*

District of Columbia-Virginia Boundary Commission created by act of March 21, 1934 (Public No. 125, 73d Congress).

Office of the Special Adviser on Foreign Trade created by Executive Order No. 6651 of March 23, 1934.

Committee on National Land Problems created by Executive Order No. 6693 of April 28, 1934; this committee was abolished by Executive Order No. 6777 of June 30, 1934, creating the National Resources Board.

Securities and Exchange Commission created by act of June 6, 1934 (Public No. 291, 73d Congress).

Aviation Commission created by act of June 12, 1934 (Public No. 308, 73d Congress).

United States Territorial Expansion Memorial Commission, created

by Joint Resolution of June 15, 1934 (Public Resolution No. 32, 73d Congress).

Foreign Trade Zone Board created by act of June 18, 1934 (Public No. 397, 73d Congress).

Federal Communications Commission created by act of June 19, 1934 (Public No. 416, 73d Congress); powers of Federal Radio Commission transferred to Federal Communications Commission, which also has powers over telephone and telegraph lines.

National Archives Establishment, National Archives Council, and National Historical Publications Commission created by act of June 19, 1934 (Public No. 432, 73d Congress).

National Mediation and National Railroad Adjustment Board created by act of June 21, 1934 (Public No. 442, 73d Congress); the National Mediation Board supersedes the former Board of Mediation, but has wider powers.

Federal Prison Industries, Inc., created by act of June 23, 1934 (Public No. 461, 73d Congress).

National Longshoremen's Labor Board created by Executive Order No. 6748 of June 26, 1934.

Committee for Reciprocity Information created by Executive Order No. 6750 of June 27, 1934.

Federal Housing Administration and Federal Savings and Loan Insurance Corporation created by act of June 27, 1934 (Public No. 479, 73d Congress).

Railroad Retirement Board created by act of June 27, 1934 (Public No. 485, 73d Congress).

National Steel Labor Relations Board created by Executive Order No. 6751 of June 28, 1934.

Committee on Economic Security and Advisory Council on Economic Security created by Executive Order No. 6757 of June 29, 1934.

National Labor Relations Board created by Executive Order No. 6763 of June 29, 1934; this board supersedes the National Labor Board created by informal order of August 5, 1933.

Industrial Emergency Committee created by Executive Order No. 6770 of June 30, 1934.

National Resources Board created by Executive Order No. 6777 of June 30, 1934; this board supersedes the Committee on National Land Problems created by Executive Order No. 6693 of April 28, 1934, and the National Planning Board of the Federal Emergency Administration of Public Works established by that Administration.

Quetico-Superior Committee created by Executive Order No. 6783 of June 30, 1934.

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## JUDICIAL AFFAIRS

**The Rôle of the Senate in the Confirmation of Judicial Nominations.** The power of the Senate to advise and consent to presidential nominations of judicial officers has recently been subjected to sharp criticism.<sup>1</sup> In the main, the Senate is charged with misfeasance rather than non-feasance in the discharge of this function. In other words, proposals to deprive the Senate of this power are not, like proposals to abolish the electoral college, based on alleged failure of the agency to function independently, but rather on its alleged abuse of the discretion conferred upon it. The Senate, say the critics in effect, has judged not wisely, but too well. Accordingly, it is their general disposition to deprecate interference with the executive rather than to devise more effective checks upon him.

An attempt to appraise the merits of these charges should begin with an examination of this general assumption upon which they rest. Of 70-odd nominations to the Supreme Court, 23, or about 35 per cent, have not been confirmed,<sup>2</sup> while of roughly 750 nominations to the inferior courts during the period 1890 to the present, but 45, or about 6 per cent, have similarly failed of approval.<sup>3</sup>

Does this record substantiate the contention that the Senate has been significantly critical of presidential selections? As to the Supreme Court, there would seem to be no question; but the situation as respects the

<sup>1</sup> See, for example, Professor Harold Laski's "Technique of Judicial Appointment," an article reprinted in *Studies in Law and Politics*, pp. 163-180. Much the same point of view is adopted by Professor B. Shartel in 28 *Mich. Law Rev.*, 845-529, 723-738, 870-909. Casual, and not at all complimentary, observations on the Senate's treatment of Supreme Court nominations are frequently made by other writers. For example, on page 312 of Simeon E. Baldwin's *American Judiciary* it is asserted that "a large number of men have thus [failure of confirmation] from time to time been deprived of a seat on the Supreme Court of the United States who would have added to its luster." For a typically unsympathetic view of the criteria employed by the Senate in recent cases, the reader may refer to page 162 of Professor Young's *American Government and Its Work*.

<sup>2</sup> Mr. Charles Warren lists 22 nominations to the Court which were not confirmed during the period 1789 to 1925 (*Supreme Court in U. S. History*, rev. ed., Vol. 2, pp. 756-763). Ogg and Ray list 9 formal rejections by the Senate (*Introduction to American Government*, 4th ed., p. 516). As a matter of fact, failure of confirmation may be attributed to senatorial opposition in all but two of Mr. Warren's cases, i.e., the nomination of William Patterson in 1793 and that of George H. Williams in 1873. Subtracting these and adding the case of Judge Parker, we have a total of 21 *virtual* rejections.

<sup>3</sup> The figures include nominations to judicial positions in the territories of Alaska, the Philippines, and Hawaii, and the District of Columbia. They were compiled under the writer's direction by Messrs. Landaa and Torbenson, of the University of Washington.

inferior courts is not so clear. If the six per cent "mortality" indicated represents the full extent of senatorial interference with the executive, that body would appear to have acted with remarkable restraint. It is to be remembered, however, that the custom of presidential consultation plus senatorial courtesy has operated throughout this period with more or less consistency to predetermine candidacies according to the preferences of individual senators. To what extent, then, is the character of this senatorial influence upon the *making* of nominations germane to the rôle of the Senate in their *confirmation*?

Of course, in so far as the power of confirmation simply "casts its shadow before," i.e., operates prospectively to determine the character of the nomination on the basis of the anticipated reaction of the confirming body, there is no difficulty. The President is only accommodating himself beforehand to the same criteria that will be applied formally when his selection is submitted. But when the executive is required to cater to the prejudices of one or two individual senators as the practical condition for confirmation by the rest, is this also a necessary result of the existence of the confirming power in the Senate? If it is, then objectionable nominations, when clearly influenced by individual senators, constitute a valid argument for depriving the Senate of this power.<sup>4</sup> If it is not, we may deprecate such nominations while favoring a retention of the power itself.

In the opinion of the writer, there are two reasons for adopting the second attitude. In the first place, it is not at all clear that the President would be less influenced by the prejudices of individual senators of his own party were the Senate to have no power to review his selections. Patronage is enjoyed now, and would continue to be enjoyed, by members of both the House and the Senate as the price for party regularity. In all probability, not the character of appointments, but the balance of power in legislation would be affected by the proposed change. The second reason for proposing to consider the power of confirmation on its merits (apart from senatorial influence upon the nomination) is that senatorial courtesy itself seems to be on the decline, even though the custom of consultation, which is supposed to be its corollary, continues in full force.<sup>5</sup>

Together, these reasons justify us in judging the Senate on the character of its differences with the executive in the matter of judicial personnel. In other words, a bad nomination by the executive is no reflection

<sup>4</sup> Professor Kenneth C. Sears condemns "usurpation" by senators of the power to nominate, instancing the nomination of Albert Watson to the district bench in Pennsylvania. 25 Ill. Law Rev., 54 ff.

<sup>5</sup> A conspicuous example is the case of Albert Watson, whose nomination was not confirmed despite the active support of Senator Reed of Pennsylvania.

upon the Senate. If it is rejected, the Senate should be credited; if it is agreed to, the scales are even. Only if a good nomination is rejected have we evidence against the institution.<sup>6</sup>

What constitutes a good judicial nomination and what a bad one must remain in large part a matter of opinion. It is true that records of various sorts are available upon which to base such opinion, and it is legitimate enough to indict the Senate for rejecting one who, so far as our information about him goes, would have made an admirable judge.<sup>7</sup> But such condemnation must always be tentative and inconclusive so long as we lack any definite knowledge of the considerations presented to the Senate and upon which it acted. This was the case with presidential nominations until 1929.<sup>8</sup> Since then a much more satisfactory type of evidence has been available upon which to appraise the function of confirmation. This consists of both hearings before sub-committees of the Senate committee on the judiciary, and debates in the Senate itself.<sup>9</sup> It is now possi-

<sup>6</sup> The conclusion that senatorial influence upon the making of nominations is not to be taken into account in assessing the significance of confirmation argues that the latter power is of little or no moment as applied to inferior judicial officers on the strength of the figures cited above. On the other hand, the same argument leads us to suspect that the percentage of rejections in this class is likely to increase.

<sup>7</sup> The nominations of Marshall, Taney, and Mathews—to name only a few of the successful candidates—provoked great controversy, and it is not difficult to document these controversies with the arguments pro and con of their contemporaries. The point is that these arguments were not directed solely to the agency charged with the business of confirmation.

<sup>8</sup> The new order was ushered in by the passage of the La Follette resolution of June 18 which amended par. 2 of Senate rule 38. The resolution provides for the transaction of all business in open session unless it is otherwise provided, in the case of a specific nomination or treaty, by majority vote. And even when a closed session is so ordered, any senator is permitted to divulge his vote. See *Cong. Rec.*, Vol. 72, p. 4054. Closely related to this departure is the custom of holding public hearings on judicial nominations. This was inaugurated in 1916, when the name of Louis D. Brandeis was sent to the Senate.

<sup>9</sup> The only case in which the hearing was conducted by the entire judiciary committee was that of Wallace McCammant. A favorable report had been recommended by the Senate. The only case in which a judicial nomination has escaped committee reference entirely was that of Mr. Justice White, whose elevation to the chief justiceship was directly confirmed. The following hearings will be cited hereafter by reference to the surname of the nominee only:

James H. Wilkerson to be circuit judge 7th circuit	72nd Cong. 1st session
Louis D. Brandeis to be assoc. justice Supreme Court	64th Cong. 1st session
Albert Watson to be dist. judge (Penn.)	71st Cong. 1st session
Gunnar Norbye to be dist. judge (Minn.)	71st Cong. 2nd session
W. J. Tillson to be dist. judge (middle dist., Ga.)	69th Cong. 2nd session
Kenneth Mackintosh to be circuit judge 9th circuit	72nd Cong. 1st session
Wallace McCammant to be circuit judge 9th circuit	69th Cong. 1st session
J. J. Parker to be assoc. justice Supreme Court	71st Cong. 1st session

ble to analyze the *milieu* of interests in which the Senate works and the yardstick which it actually applies in confirmation procedure. The staple type of objection employed against judicial nominations as disclosed by this evidence goes to questions of personal character and integrity. Under this general head it is possible to distinguish at least three considerations which may be exemplified as follows:

*Constitutional Defects of Character.* In the hearings on the nomination of A. L. Watson, testimony was introduced to the effect that the nominee "lacked independence of thought and decision." He was charged with being servilely dependent upon, first, the older men in his father's law firm; then, when in politics, upon Governor Pinchot; and later, when on the bench, upon Judge Maxey.<sup>10</sup> This dependence was illustrated in the latter situation by the consistency with which the candidate joined with Maxey rather than with a third judge in the execution of certain orders of an administrative character which it was the statutory duty of the court to make. The resulting "two-judge" orders (Maxey and Watson) were often—so it was alleged—used for purely partisan purposes, e.g., to remove an inspector of elections opposed to the Maxey group.<sup>11</sup>

A variation upon this same theme of constitutional defects of character is represented in charges against Judge G. H. Norbye's nomination to the district bench in Minnesota. These charges were to the effect that the nominee was unfair, arbitrary, and intolerant. In support, it was testified that after consultation with the prosecutor and without consulting defendant's counsel, he had determined that one week was ample time to prepare a defense in a case that actually took thirty days to try.<sup>12</sup> In the case of some of the witnesses, this becomes a general charge of intellectual arrogance.

A third and last defect of character to be urged against a candidate for judicial position is that of downright mendacity. The nomination of J. H. Wilkerson to the 7th circuit affords an unusual example of the application of this test. It was alleged, in effect, that Wilkerson had "double crossed" Al Capone and the district attorney in the course of the former's trial for evasion of the federal income tax laws. It was testified at the hearing that Judge Wilkerson was privy to an arrangement between the U. S. attorney, G. E. Q. Johnson, and the defendant, under which the latter was assured a two-year term if he would plead guilty. Capone did so,

<sup>10</sup> *Hearings*, testimony of M. J. Martin.

<sup>11</sup> Charges of this and a similar nature, such as that the candidate lacks "sufficient stamina, moral fibre, and backbone to make an independent judge," are often conjoined with assertions that he is "arbitrary and intolerant." For example, in the case of Judge Wilkerson it is the latter characteristic that was most emphasized, but both the Vigilance Forum and the Clean Government League accused him of being "weak and unfair." *Wilkerson Hearings*, p. 15.

<sup>12</sup> *Norbye Hearings*, pp. 51-57.

but was indiscreet enough to tell newspaper men of the arrangement. As a result (so it was suggested), the judge announced that he would abide by no arrangement between the prosecution and the defense as to the prison term. The plea of guilty was then withdrawn; Capone stood trial, and was duly sentenced to eleven years in prison.<sup>13</sup> These facts, in barest outline, afford the basis for the assertion that "Wilkerson's conduct in that case was the most contemptible that I have ever witnessed in municipal, state, or federal courts."<sup>14</sup>

The fight on the nomination of Louis D. Brandeis (now Mr. Justice Brandeis) is destined to be a classic in the annals of Senate confirmation. Mr. Brandeis was assailed from a bewildering variety of angles. In the present connection, it is interesting to note three specific charges of misrepresentation. It was testified, first, that he had misrepresented the attitude of the state board of trade to a committee of the Massachusetts General Court in the matter of certain legislation affecting the Boston Consolidated Gas Company.<sup>15</sup> It was also testified that immediately after he had written an article for *Harper's Magazine* advocating price maintenance, in which it appeared that he was vigorously opposed to chain stores, he accepted employment at the hands of L. K. Liggett for the very purpose of working out a chain store system which would not be in violation of the Sherman Act. Mr. Brandeis' conduct as special counsel in the 5 per cent rate case of 1913 was thus characterized by Mr. Clifford Thorne, counsel for the shippers in the same case: "The gentleman whom you have under consideration was guilty of infidelity, breach of faith, and unprofessional conduct in connection with one of the greatest cases of this generation."<sup>16</sup>

*Failure to Observe Ethical Standards in Professional Conduct.* The sort of objection involved under this head invites attention to the alleged violation of more specialized group *mores* than those summarized above. The conduct is reprehensible because the nominee is a member of a class having peculiar responsibilities. It still falls short, however, of the clear infraction of any rules which would expose the guilty party to any sort of organized discipline. The most interesting objection concerns the conduct of a lawyer who gives expert assistance to a client whose interests are adverse to those of the government. In the specific instance cited, it is the government as a tax collector that is involved. During the war, the government purchased a large stand of spruce in Lincoln county, Oregon. When

<sup>13</sup> Hearings, testimony of Mr. Johnson, pp. 237-249.

<sup>14</sup> Hearings, p. 249, testimony of Arnold B. Larson, at the time a reporter for the United Press.

<sup>15</sup> Hearings, pp. 1308-1316, testimony of Edward R. Warren. See also Senator Chilton's comment upon the charge. *Sen. Rep.* No. 2, pp. 35-37 (64th Cong., 1st sess.).

<sup>16</sup> Brandeis Hearings, p. 8.

the war ended, the government proceeded to liquidate. The Pacific Spruce Corporation was organized to acquire this interest from the government. This it did under a contract which fixed a price of two million dollars to be paid over a ten-year period, and provided further for the retention of title by the government during this period. The Supreme Court subsequently held that the property was not taxable by Lincoln county. The claims committee of the Senate, to which a bill to reimburse the county was referred, investigated the whole situation. Its report termed the contract a "reprehensible conspiracy." Wallace McCammant had been retained by the corporation and admittedly drew up both its articles of incorporation and the contract in question.

The representation of parties in adverse interest is a distinct violation of legal ethics.<sup>17</sup> The conduct of Mr. Brandeis in accepting briefs for the Equitable Life Assurance Company while retained by the Equitable Policy Holders Association was urged upon the Senate committee as constituting such violation. Something of the same sort was attempted to be made of the dual capacity assumed by the same nominee in the case of one Patrick Lennox. Brandeis represented certain creditors of Lennox, and also, with the former's assent, he agreed to see that the latter "got his legal rights and no more." On Mr. Brandeis' advice, Lennox made an assignment for benefit of creditors, Brandeis' then partner becoming the assignee. When, later, the creditors, represented by Brandeis, moved to force Lennox into bankruptcy, the assignment was relied upon as an act of bankruptcy.<sup>18</sup>

Other evidence calculated to reflect upon the intellectual integrity of the now highly respected member of the Supreme Court concerned his alleged use of confidential information acquired as a director of the United Shoe Machinery Company to document a spirited attack upon the tying clause provisions of machinery-leasing contracts. This attack was made some three years after resigning his directorship when he was acting for lessees under such contracts.

The ethics involved in representative appearances before congressional investigating committees presents another fairly distinct question bearing upon the general problem of professional ethics. It appeared that during the investigation of Secretary Ballinger's administration of the Department of the Interior<sup>19</sup> Mr. Brandeis was retained by *Collier's*

<sup>17</sup> Code of Ethics, American Bar Association. Of course, this is conditioned upon non-disclosure of the relationship to all parties concerned. In neither of the cases cited did the evidence indicate that Mr. Brandeis had concealed his status. Nevertheless, this is the general principle relied upon.

<sup>18</sup> See the different constructions placed upon these facts by the majority and minority committees. Senate Report No. 2, 64th Cong., 1st sess., Part 1, pp. 18-26; Part 2, pp. 19-20.

<sup>19</sup> Senate Doc. 719, 61st Cong., 3rd sess.

*Magazine* at a fee of \$25,000. *Collier's* had contributed to the scandal by printing the story of L. R. Glavis, chief of the field division of the General Land Office, charging Ballinger with several varieties of incompetence. Glavis was thereupon dismissed. Brandeis' appearances before the committee were ostensibly in his behalf; the *Collier's* connection was not disclosed to the committee.

*Failure to Observe Ethical Standards in Official Conduct.* The notion of disinterestedness in the position of the judge as respects litigation before him was brought to bear during the hearing on the nomination of Judge Wilkerson. Senator Glenn was admittedly instrumental in securing Wilkerson's elevation to the bench, but the latter never asked to be excused from hearing cases brought before him by Glenn's law firm. This was unfavorably contrasted with Judge Woodward's voluntary refusal to act under similar circumstances.<sup>20</sup>

A final category of blame due to breach of professional ethics involves what may be called, for purposes of distinction, "political ethics." According to Senator Johnson, Wallace McCammant was conspicuously remiss in his failure to observe the simple technique of a national convention delegate. It is true that the vagaries of the Oregon primary law somewhat complicated the issue, but the following bare facts seem to have been established: McCammant submitted himself as a delegate in the Republican primaries; Johnson carried the state in the general primary election; the delegation was considered pledged to him;<sup>21</sup> McCammant "bolted" the popular choice at the convention.

The debates in the Senate on the nomination of Charles E. Hughes to the chief-justiceship were in some phases reminiscent of the campaign of 1916. Hughes had allowed himself to be drafted from the bench to run against Wilson. A decade or so later it was proposed to restore him as chief justice. Both of these changes in status exposed him to criticism. Senator Norris, one of the most forthright objectors to Hughes' second appointment, did not undertake to establish that the first shift was *contra bono publico*. He relied upon the second: "I was not one of those who criticized Mr. Hughes for resigning from the Supreme Court bench in order to become a candidate for president of the United States. I freely concede that a judge has an honorable right to leave the domain of the judiciary and enter political life. But after he made the campaign for a

<sup>20</sup> Both judges were sponsored by Senator Glenn. The charge in question was presented by Senator Blaine to Senator Glenn while the latter was giving testimony before the Senate committee. *Hearings*, p. 19.

<sup>21</sup> Under the Oregon statutes, two methods of getting a delegate's name on the ballot were possible. That employed by McCammant did not place him under a legal duty to vote for the state-wide popular choice for president. On the other hand, McCammant had appealed to the voters in language construed by his senatorial opponent as a promise that he would vote for the popular choice.

higher political office, he ought not to be by political power put back again on the bench which he voluntarily left to enter the political world."<sup>22</sup>

Before leaving the subject of character objections, something should be said of political activity and judicial appointments. A "political" career is not in itself prejudicial to a candidate under scrutiny by the Senate. As a matter of fact, 28 of the 70 persons nominated to the Supreme Court had been active in politics prior to their appointment. It is true that the American system, unlike the British, affords a basis for distinguishing between "partisan" activity and "public" activity, but no occasion for its application has presented itself in the materials available for this study.

Partisan motives for the appointment, on the contrary, have frequently been urged as a reason for rejection. This was illustrated in the recent case of the nomination of Judge J. J. Parker to be associate justice of the Supreme Court.

On March 13, 1930, James M. Dixon wrote Walter Newton (then a secretary to President Hoover) in part as follows: "I speak as a native-born North Carolina Republican. North Carolina gave President Hoover a 65,000 majority. In my judgment, it carries more hope of future permanent alignment with the Republican party than any other of the Southern states that broke from their political mooring last year. If the exigencies of the situation permit, I believe the naming of Judge Parker to the Supreme Court would be a major political stroke."<sup>23</sup>

Apropos of this letter, Senator McKellar inferred, first, that such advice had been instrumental in determining Parker's selection; and second, that the political considerations represented were decidedly improper. It is difficult to see how the Senate could consistently apply such criteria to inferior court appointments and at the same time observe the custom of senatorial courtesy. As has been indicated, this institution usually operates to secure the integrity of party lines in the field of judicial patronage.

*Violation of Law.* A second distinct category of objections is represented in the introduction of evidence calculated to establish a breach of existing law. It is true that the burden of technical proof is not assumed, but there is no doubt that the sort of conduct implicated is criminal. Thus, testimony that a nominee has appointed personal friends to outrageously lucrative receiverships can hardly avoid a charge of corruption. In the case of Judge Wilkerson, the principal beneficiary of this sort of largess was alleged to have been his former law partner, chief political sponsor, and life-long associate—Edward J. Brundage.<sup>24</sup> The C. M. & St. P. re-

<sup>22</sup> *Cong. Rec.*, Vol. 72, p. 3378 (Feb. 11, 1930).

<sup>23</sup> *Cong. Rec.*, Vol. 72, p. 8040 (April 30, 1930).

<sup>24</sup> In no case does the writer purport to evaluate the evidence cited by omitting

ceivership appears to have netted Mr. Brundage \$224,000—\$4,000 per month plus \$100,000 final payment. The same individual's appointment by Wilkerson in the Boone Woolen Mills case was vacated on appeal to the Supreme Court, on which occasion Chief Justice Taft characterized the appointment as "improperly obtained." An action had been brought in the superior court of Cook county for the purpose of getting a receiver appointed for the above mills. Postponement of proceedings in the state court enabled the corporation to secure the appointment of Brundage by Judge Wilkerson. When the receiver subsequently appointed by the state court applied to Wilkerson for an order requiring Brundage to turn over the properties involved, Wilkerson refused on the ground that the case pending before him was a different case than that before the state court. As noted above, this construction of the situation did not convince the Supreme Court.<sup>26</sup> Numerous other instances of the same sort were cited of which no effort has been made to single out the most damaging.<sup>26</sup>

A different type of misconduct, which likewise amounts to a charge of crime, may be described as manipulation of a grand jury to prevent the return of indictments. This, it was charged, Judge Norbye had accomplished in the Ten Thousand Lakes Fur Farm Swindle case. The background of this case was tersely described by an objector who wrote the committee that "it was established that \$600,000 of paper rats were sold to a lot of suckers by using the power and influence and prestige of officials of the state of Minnesota to do it." The failure of the enterprise led the public to expect action from the grand jury over which Judge Norbye presided. The misconduct charged consisted of, first, a failure to excuse Governor Christianson's private secretary who was a member of the jury; second, appointment of a millionaire grain merchant—a known "enemy of the farmer," as foreman.<sup>27</sup> The subsequent impotence of the jury was ascribed by several of its members to the machinations of these two members, plus hampering instructions from the judge which were intended to discourage investigation.

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the "other side." In this particular case, however, it is interesting to note that a special committee of the Chicago Bar Association refuted the above statements *seriatim*. The committee concluded: "We have discovered no facts indicating that in the initiation and conduct of the St. Paul receivership Judge Wilkerson was actuated by motives not in keeping with the highest standards of judicial conduct." *Hearings*, pp. 226–228.

<sup>26</sup> *Wilkerson Hearings*, pp. 271 ff.

<sup>28</sup> For example, the Chicago St. Railway receivership. *Ibid.*, p. 278.

<sup>27</sup> Under the statutes of Minnesota, the judge may appoint the foreman of a grand jury, or he may leave the selection to the jury itself. Not only the character of the appointment, but the exercise of discretion at all in the premises, was objected to. *Norbye Hearings*, p. 55.

It is not so clear that the third and last sort of misconduct treated under this head would expose the guilty party to criminal prosecution. It may be phrased generally to include the abuse of official authority for partisan purposes. It is assumed, moreover, that attainment of the partisan purpose redounds to the personal advantage of the user of such authority. The authority abused in the case of Judge Watson was the authority to recommend parole for prisoners tried and sentenced before him. This he was alleged to have exercised for political reasons shortly before election time.<sup>28</sup>

Testimony that the nominee had resolved election cases on the same basis, i.e., as the price for personal support, were also made. Judge Tillson, too, was charged with having used his appointing power to the same end.<sup>29</sup>

*Incompetence, Inefficiency, Lack of Objective Qualifications Generally.* The most obvious test to employ in evaluating the ability of one who has been a judge is the technical quality of his decisions. In the hearings on the Wilkerson nomination, Professor W. W. Cook was quoted as authority for the assertion that not a single decision cited by Wilkerson in support of his views in the labor injunction case of 1922 was in point, and "that the various quotations he employs, or upon which he relies, are, so far as the present case is concerned, merely more or less weighty *dicta*.<sup>30</sup>

A test similarly applicable to judges raises the question of what may be called their "batting average" with appellate tribunals. As applied to the judicial career of Mr. Watson, this test would appear fairly conclusive: Judge Buffington of the Third Circuit testified<sup>31</sup> that Watson was reversed in eight cases out of ten appealed.

A charge that the candidate lacks "adequate professional training palpably reflects upon his competence. Both academic equipment and practical experience at the bar would be relevant here. The first has never been mentioned. In the case of Judge Tillson, the second took the form of an assertion that the candidate had never been a "trial lawyer."

An interesting test, of which more systematic use is likely to be made in the future, is the endorsement of the nominee by the local bar. Figures introduced during the hearings on Judge Watson indicated that a decided majority of the local practitioners (147 out of 225 in the district) actively supported his opponent. Only 61 supported Watson.<sup>32</sup>

<sup>28</sup> *Watson Hearings*, p. 33.

<sup>29</sup> *Tillson Hearings*, p. 3. The category of criminal charges can hardly be made exclusive because the offense is not specified independently of the witnesses relied upon to establish it, nor are the latter held to any accepted rules of relevancy. This will be commented on at more length presently.

<sup>30</sup> *Hearings*, pp. 75-78, reproducing an article appearing in the *Yale Law Review* for December, 1922.

<sup>31</sup> By letter to Senator Borah. *Hearings*, p. 75.

<sup>32</sup> The reliability of such polls of professional opinion, of course, depends upon a

No formal limitations on the appointing power in the matter of age, residence, or citizenship exist. Each of these has, however, been urged as relevant. Senator Dill, for example, felt that Mr. Hughes was too old: "I am impressed with another fact. Mr. Hughes is no longer a young man. The youngest man ever appointed to the U. S. Supreme Court was Joseph Story. He was 32 years of age when he was appointed. The oldest man ever appointed, previous to the appointment of Mr. Hughes, was Justice Lurton, who was appointed by President Taft. He was 65. I understand Mr. Hughes is nearly 70. I have been rather wondering why at that late age in life he should be called back. . . ."<sup>33</sup>

The feeling that district appointments should not be conferred upon non-residents finds expression in an objection to Judge Tillson's candidacy on the ground that he was not a resident of the district for which he was appointed at the time the district was created. It appeared that he lived four miles outside of it. Such objections are interesting in their application to a possible bureaucratic tradition in the federal judiciary. To the extent that the objection has any force, the growth of such a tradition is manifestly impossible.

*Economic and Political Philosophy.* A final category of considerations presented to the Senate in the discharge of its function of confirmation relates to the attitudes of candidates toward public issues. And, as this may easily be pushed further to involve fundamental points of view, it is not too much to say that opposing philosophies are at stake.

The most concrete aspect of this matter of senatorial concern is the class bias of the nominee. It is a fair deduction from the results that the active opposition of organized labor is the most fatal objection that can be raised. In the case of the Wilkerson nomination, such objections were tellingly presented by Donald Richberg on behalf of the Railway Labor Executives Association, composed of the heads of the 21 standard railway labor organizations. Mr. Richberg charged, in general, that Wilkerson had been throughout both his professional and judicial career a partisan advocate of employers. Specifically, most of the charges here, as well as in the other cases, related to the use of the injunction in labor disputes.<sup>34</sup>

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number of factors. The bitter controversy over the Norbye nomination was preceded by a canvass of the Minnesota bar on the name of Senator Schall's choice, Mr. Ernest Michel. It was contended that this poll was instigated by Attorney-General Mitchell and accompanied by the latter's severe condemnation of the candidate; and also that the form of the questionnaire was prejudicial. Of 1,500 ballots, the above candidate received 293.

<sup>33</sup> *Cong. Rec.*, Vol. 72, p. 3500 (Feb. 12, 1930).

<sup>34</sup> The most important of the cases relied upon by Judge Wilkerson's opponents was what has become popularly known as the Daugherty injunction case, involving proceedings instituted by the Attorney-General in 1922 to break the great railway strike of that year. These are reported in 283 Fed. 479, 286. Fed. 228, 290 Fed. 798. See *Wilkerson Hearings*, p. 43 ff.

On this score, Mr. Richberg emphasized not only the prejudicial effects upon labor of this weapon, but also the positive illegality of the court's action under the circumstances. The latter was alleged to consist in, first, a misapplication of the anti-trust acts to labor unions in the face of the qualifications introduced by the Clayton Act,<sup>35</sup> and second, a misapplication of the injunctive process of a single federal district court to the entire country.<sup>36</sup>

In another injunction case, the same judge was asserted to have used such vague and inconclusive language in restraining strikes by electrical workers as to violate the settled law requiring injunctions to be clear and intelligible. Incidentally, this also involved a remarkable stretching of the commerce power, because the prejudicial practice complained of by the workers was the use by the Western Union of non-union labor in the installation of call-boxes in local buildings.<sup>37</sup>

Judge Kenneth Mackintosh was likewise attacked by organized labor, his disposition of two cases in particular being cited by E. J. Tracy of the A. F. of L. as evidence that "Mackintosh could not rightly interpret the spirit of the newer labor laws being enacted by Congress." In both of these cases the complaint was that the nominee had "blindly followed precedent."<sup>38</sup> The first of them involved the legality of picketing activities; the second, an application of the highly controversial doctrine of "conspiracy" to a secondary boycott. There is some justification for refusing to regard the law of torts as "settled" in either case, but this is hardly justification for regarding the law as "wide open" for discretionary interpretation by an inferior court. It is doubtful whether labor's objection to Mackintosh was really accompanied by any reflections on the strict legality of the conduct complained of.

There were certainly no implications of this kind in labor's assault on the Parker nomination. It was conceded that the latter's opinion in the famous Red Jacket Coal case followed precedents established by the Supreme Court. The labor leaders—led by William Green—were committed to the establishment by the courts of the nation of a "labor rights policy" in exactly the same way that they were interested in the congressional adoption of the same policy. Mr. Green did, indeed, assert that Judge Parker had "gone far beyond the doctrines laid down either by the Supreme Court of the United States or the circuit court of appeals for the fourth circuit"; but it could hardly be stated that his decision

<sup>35</sup> The decision of the Supreme Court in *Michaelson v. U. S.*, 262 U. S. 42, was cited to sustain this charge of illegality.

<sup>36</sup> *Robinson v. Railway Labor Board*, 268 U. S. 619, decided that, in the absence of specific statutory provisions to the contrary, process of a federal court is limited to the district for which it is organized and established.

<sup>37</sup> *Wilkerson Hearings*, 78.

<sup>38</sup> *Mackintosh Hearings*.

was directly opposed to established law. Senate leaders made it perfectly clear that opposition to the Parker nomination was based upon opposition to the "yellow-dog" contract which the nominee had upheld: "The nomination of Judge Parker for the supreme bench of the United States has brought up for consideration a contract popularly, and not without cause and not without reason, styled the 'yellow-dog' contract."<sup>39</sup>

From this concrete application of economic philosophy to the specific institutions of organized labor, we pass to the more generalized ground of protest that the nominee believes in "property rights as opposed to human rights." It was upon this theme that members of the Senate were most articulate: "I have no quarrel with Judge Hughes as to personal character. I grant that he is a man of personal integrity. I take no issue with the senator from Illinois (Glenn) as to Justice Hughes' great ability as an advocate at the bar. But, Mr. President, the man who is personally honest, and yet who is driven by an honest conviction to certain economic views, is a much more dangerous judge and a much more dangerous man in this or any chamber than the weak or vacillating public servant."<sup>40</sup> The same mistrust of ability coupled with disliked opinions lies behind Senator Dill's remarks on the same day: "Mr. Hughes is a man of quality, a man of great ability. He honestly believes in the doctrine of property rights as superior to human rights under the law he has so ably advocated. That makes him all the more effective and from my viewpoint all the more objectionable." One could hardly want a more explicit avowal than that of Senator Wheeler, who, after citing Mr. Hughes' record on New York state social legislation<sup>41</sup> exclaimed: "I am voting against him because of the economic views he holds."

Very much the same theme is implicit in condemnation of associations and clientele. In Mr. Hughes' case, it was asserted that these had undemocratically conditioned the nominee. Senator Norris based his objections on this ground: "Perhaps it is not far amiss to say that no man in public life so exemplifies the influence of powerful combinations as does Mr. Hughes. Since he retired from the bench and made his unsuccessful campaign for the presidency, he has had a great career before the Supreme Court of the United States where he formerly sat as one of the judges. During the last five years he has appeared in 54 cases before the Supreme Court. Almost invariably he has represented corporations of almost untold wealth. There is no doubt that in many of these

<sup>39</sup> Senator Borah, *Cong. Rec.*, Vol. 72, p. 7930 (April 29, 1930).

<sup>40</sup> Senator Tom Connally, *Cong. Rec.*, Vol. 72, p. 3574 (February 12, 1930).

<sup>41</sup> For example, veto of the teachers' bill providing for equal wages for women and men teachers; the message to the N. Y. legislature against the income tax; the veto of the Coney Island nickel fare legislation, the two-cent-a-mile bill, and the full crew bill.

he has been employed because he had formerly been a member of the Supreme Court and it was at least believed by his wealthy clients that this fact would have a tendency to secure favorable decision from that high tribunal . . . During his active practice he has been associated with men of immense wealth and lived in an atmosphere of luxury which can only come from immense fortunes and great combinations."<sup>42</sup>

The early associations of Mackintosh were claimed to have established the same bias: "Born to a big estate, he never knew what it was to struggle for a living and consequently knows little of the struggles and suffering of the masses."<sup>43</sup>

What may be called a political, as distinguished from an economic, philosophy has also received attention at the bar of the Senate. When one considers the prominence and variety of Mr. Hughes' political connections, it is not surprising that opponents found much to object to. The character of our federal union continues to furnish material for controversy. In the case of Mr. Hughes, it was his opinion in the Shreveport rate case, which, according to Senator Brookhart, disclosed an unfortunate lack of sympathy with "states' rights."<sup>44</sup> On the other hand, Mr. Hughes' defense of Truman H. Newberry was cited by Senator Borah as evidence of a too great solicitude for states' rights.<sup>45</sup>

It is difficult to state the issue of "preparedness" with much precision, but Secretary of State Hughes undoubtedly gave its proponents something of a shock in his Washington Conference position on reduction of armaments. This point of view was articulate in the remarks of Senator McKellar, who credited Hughes with having agreed "to scuttle the greatest fleet America ever had."<sup>46</sup>

The theory of separation of powers, too, may afford the basis for attack. A rigid application of this theory is responsible for the Supreme Court's refusal to tolerate congressional investigations of administration. Mr. Hughes apparently acted on this theory in opposing senatorial investigation of charges of maladministration in the Treasury Department. Senator Glass regarded this position with extreme disfavor.<sup>47</sup>

The foregoing survey of the actual conditions under which a very significant function of government is discharged affords the basis for certain conclusions of a relatively objective character.

In the first place, the nature of the influences brought to bear on the Senate in the consideration of judicial nominations demonstrates its

<sup>42</sup> *Cong. Rec.*, Vol. 72, p. 8182 (May 2, 1930).

<sup>43</sup> *Mackintosh Hearings*.

<sup>44</sup> *Cong. Rec.*, Vol. 72, p. 3435 (February 12, 1930).

<sup>45</sup> *Cong. Rec.*, Vol. 72, p. 3249 (February 11, 1930).

<sup>46</sup> *Cong. Rec.*, Vol. 72, p. 3588 (February 13, 1930).

<sup>47</sup> *Cong. Rec.*, Vol. 75, p. 3581 (February 13, 1930).

complete incapacity to discriminate between candidates on the basis of personal integrity. As already remarked, this is a staple type of objection aired before Senate committees, but it needs no considerable reading between the lines to see the utter futility of most of the objections raised. Character objections resolve themselves into one or the other of two things. Usually they mask a real opposition to the candidate's political and economic views. At other times, they furnish a vehicle for the expression of personal spites. In not one of the cases cited did a reflection upon the personal integrity of a candidate represent a dispassionate judgment as to his character. This was amusingly illustrated in the course of the hearings on Watson. One lady, whose testimony was expected to be particularly damaging, when pressed down to the facts, admitted that she knew nothing against the candidate except that he was a political wet. She was called as a fellow townsman and neighbor; she left identified as an officer in the local W. C. T. U.

The factitious nature of "character" testimony (especially when disparaging) is beautifully illustrated in the Brandeis hearing. Had everything charged to Brandeis' moral account been true of a different (otherwise satisfactory) nominee, it is hardly conceivable that the items would have been considered worth mentioning at all. But Brandeis was a rank "outsider" as respects the group that opposed him. His cultural background was different; his methods irritated them; and his successful advocacy of doctrines which they opposed alarmed them. These were the real objections of many who "gravely doubted" his honesty.

At the other extreme may be noted those cases in which the objection is palpably inspired by a personal pique magnified into serious proportions by hurt pride. It can hardly be doubted that Senator Johnson's opposition to Judge McCamant was principally due to the harsh things McCamant had said about him; nor is there any doubt that Senator Schall's opposition to the Norbye candidacy was largely due to certain highly uncomplimentary remarks which Norbye was supposed to have made about Schall at a private club.<sup>48</sup> Typical of the witnesses called to give testimony of this character was the obscure grand-juryman whose well-meant but highly officious letters to his judge were simply ignored by the latter. This omission was naturally fatal to Norbye's reputation for probity, in the opinion of the witness.<sup>49</sup> Then there was the case of a Mr. Spelling, called to testify to the generally "unscrupulous" character

<sup>48</sup> The very personal character of Schall's objections was frankly admitted by the senator: "I personally object to his confirmation, which would be obnoxious to me and place in the saddle in my state my belittlers and slanderers and defamers of my character. Mr. Norbye is, and has been, my personal political enemy... I ask that the time-honored custom of the Senate be enforced, and that your committee and the full judiciary committee reject his confirmation." *Norbye Hearings*, p. 85.

<sup>49</sup> *Norbye Hearings*, p. 58.

of Mr. Brandeis. It seemed that Mr. Spelling had once sent a brief to Mr. Brandeis for commentary. This was returned with liberal marginal notations of "absurd," "unfair," and the like.

A rather more complicated instance of the same sort seriously prejudiced Brandeis' chances of confirmation. The complaining witness, Mr. Clifford Thorne, was chief of counsel for the shippers in the famous five-per-cent-rate-increase case before the Interstate Commerce Commission. As a thoroughly conscientious advocate, he came to identify the interests he represented with the general public interest. When, therefore, Brandeis was appointed by the Commission to develop the public's side of the case,<sup>50</sup> he was welcomed as an ally by Thorne. At the final hearing, Brandeis assumed a point of view inconsistent with that advocated by Thorne and more favorable to the carriers.<sup>51</sup> The latter was shocked and bitterly disappointed; he felt that Brandeis had "thrown the case." This construction of the situation seems never to have occurred to the other participants, but Thorne continued to cherish his sense of hurt.

The flimsiest rationalization of opposition actually based on disagreement with the candidate's views on public questions takes the form of charges that he "lacks judicial temperament." This is clearly illustrated in the case of Judge Mackintosh, who had expressed himself forcibly on the necessity for speedy punishment of those responsible for the Centralia "massacre."<sup>52</sup> He also wrote the decision of the supreme court of Washington disbarring one Elmer Smith, who had defended the "reds" charged with the crime. The lack of judicial temperament consisted in being on the "wrong" side of what had become an essentially political issue.<sup>53</sup>

The fact is that the Senate lacks both the facilities for discounting and the disposition to discount such evidence. The hurdle of senatorial confirmation contributes little or nothing to the basic morale of federal administration.

It is possible that an inquiry into charges of crime demands somewhat different qualities of the agency acting than an inquiry into questions of personal character and reputation. For this reason, Senate confirmation must be assessed with this type of objection in mind.

Here we are concerned with a function which places a premium upon

<sup>50</sup> Brandeis detractors emphasized the fact that the shippers were weaker, as respects legal talent, than the carriers, and that accordingly Brandeis was really commissioned to help them. See Cummins, *Minority Report*, p. 301.

<sup>51</sup> Brandeis concluded that "the net operating revenues of the railroads are smaller than is consistent with their assured prosperity and the welfare of the community."

<sup>52</sup> In a letter to George Dysart, the local prosecutor.

<sup>53</sup> Oddly enough, Mackintosh's "tight-rope walking" in the Wickersham report was also offered as proof that he lacked judicial poise!

formality of procedure and absolute impersonality on the part of the examining body. It is the Senate as a court, as contrasted with the Senate as an executive council. The former conception of its function has often appealed to the proprieties of individual senators in the hearings. But it is very indifferently approximated in actual practice. True, the manner of the courtroom is occasionally adopted by senators with a legal background, but the general effect is incongruous and never effective in preventing the introduction of completely irrelevant testimony.<sup>54</sup>

It is on such occasions that the proceedings take on the character of a legislative investigation rather than a legislative hearing.<sup>55</sup> Of course no one will deny (with the memory of Tea-pot Dome still fresh in mind) that legislative investigations are occasionally fruitful in uncovering evidence of criminal misconduct, but it does not appear that they have ever been so fruitful when attempted in the course of confirmation proceedings. Their initiation and prosecution always depend on political animus. This is unfortunate, but apparently constitutes a necessary dynamic when far-flung corruption invades administration. It is not necessary, however, as a preliminary to the choice of personnel, and it certainly is not practicable as employed in the past.<sup>56</sup>

A third basis for evaluating the Senate as a confirming body is presented in the consideration given to various tests of an objective character. The candidate's technical ability to handle the job is obviously relevant, but the practice of the Senate assigns it no special method of proof nor weight in final determination. On the whole, there is a decided lack of curiosity about this type of qualification and not much disposition to be critical of the evidence submitted. Endorsements by professional colleagues are admitted and filed without much inquiry as to who the endorsers are or their relation to the nominee.

Technical competence is never likely to be tested satisfactorily by a democratically constituted body. This is due not so much to a lack of technical knowledge as to habit. The yardstick habitually applied to

<sup>54</sup> The Brandeis hearings were enlivened by clashes between Senators Walsh and Clark on the admissibility of evidence—that is, on the rules to be followed—but without seriously affecting the liberty of witnesses to say, or of senators to hear, anything that came into their minds.

<sup>55</sup> A legislative investigation always involves the use of compulsory process to compel the attendance of witnesses and production of papers. See M. E. Dimock, *Congressional Investigating Committees*. In the Brandeis hearing, the presence of several witnesses was secured by subpoena, and they were regularly sworn. Subsequent practice in the above particulars shows no uniformity.

<sup>56</sup> It may be observed that none of the judges against whom impeachment proceedings have been brought seems to have encountered any difficulty in having his name confirmed by the Senate. The present investigation of judicial administration in Illinois is reported to involve Judge Woodward. His nomination was not challenged in the Senate.

public matters by politicians is the voting unit. This inclines them to discount heavily the value of any peculiar advantages not enjoyed by the average voter. Experience as the basis for competence is intelligible; education is not. It is noteworthy that not once in the discussion of candidates for judicial position was the matter of educational background even mentioned.

The final class of objections merits special attention for two reasons. First, because there is a general disposition to deprecate considerations of this type in selecting administrative personnel. Second, because (perversely enough) they are being introduced more and more frankly as respects federal judgeships. We have already remarked the surreptitious introduction of political questions under the guise of character objections, and of course they are present in one form or another throughout the proceedings. But because as character objections they are trivial, it cannot be assumed that they are trivial *per se*. What we have to consider now is the relevancy of politics and economics to the selection of judges when these considerations are frankly avowed.

If they *are* relevant, then the case for senatorial confirmation is much stronger than has been assumed, because while the Senate may not be the proper forum for *selecting wisely, adjudging lawfully, or measuring accurately*, it is an admirable medium for *reflecting truly* the state of public opinion. And it is this latter function which is emphasized in the disposition of recent nominations.<sup>57</sup>

Whatever may be said against politics in administration generally, it is neither possible nor desirable to avoid it in judicial administration where three conditions exist. These are, first, the doctrine of judicial review; second, a "liberal" theory of the judicial function; and third, a period of political transition. All of these conditions exist today, with the result that it is practically impossible to distinguish between judicial contributions to the governmental process and legislative contributions. It is accordingly perfectly logical to demand that judicial personnel be subjected to the same test of fitness as legislative personnel.

By "judicial review" in this connection the writer means the general principle that an act of a representative assembly may be invalid for the purposes of a judicial agency acting under the same constitutional authority. The presence of judicial review alone is not sufficient to produce a situation in which the judgment of a court is simply substituted for the judgment of a popular assembly. It is quite compatible with an accepted view of the judicial function which distinguishes it

<sup>57</sup> The following illustrate the sort of "interests" represented in the hearings: American Federation of Labor, Association for the Advancement of Colored People, Veterans of Foreign Wars. A judicial nomination provokes the same sort of reaction as the introduction of a public bill.

from the legislative by a reliance upon "conceptual analysis" in reaching decisions.<sup>58</sup>

But when to judicial review is added a theory of "free" decision, as conspicuously exemplified in the writings of the sociological jurists,<sup>59</sup> we have a situation which is potentially susceptible of the above construction. It is saved from reaching it only when the demands of government upon law are at a minimum—when, that is, the legislature is not impelled by changing circumstances to radical measures of relief.

In the absence of such demands, certain traditional elements in the judicial process operate to insure a distinction between it and the legislative, despite the absence of conceptualism in the law. These are professional conservatism and *stare decisis*. These do not prevent law from being "made" by the judges; but they do prevent its being made by any particular set of judges in the same way that it is "made" by a particular session of the legislature. When, however, change is in the air, *stare decisis* furnishes no guide posts, and conservatism becomes a political interest rather than a stabilizing factor. At such times, fundamental postulates of the legal order are in a state of flux. This greatly widens the sphere of discretion enjoyed by all courts. This is the justification for labor's objections to the decisions of "inferior" court judges, even though they can be defended on the ground of *stare decisis*.

The net result of these developments is substantial identity between the sort of considerations to which particular legislators address themselves in dealing with public questions, and the considerations particular judges act upon. This means that the Senate should not be deprived of a substantial voice in the selection of judicial personnel. On the other hand, it should limit its consideration to the representative aspects of a given candidacy. No consideration whatever should be given to aspersions on character, charges of criminal misconduct, reflections on competency. This result might be achieved by certain modifications in legislative procedure plus the institution of an authoritative information service.

<sup>58</sup> This was Marshall's great contribution to the dialectic of American public law. The logical conception with which he worked in determining institutional boundaries was that of *power*: given the *power* to legislate on a given subject, questions of the manner of its exercise ("reasonableness") are for the legislature. See Boudin's reference to this in his discussion of Mr. Justice Field's dissenting opinion in *Munn v. Illinois*, *Government by Judiciary*, Vol. II. Of course this use of absolute concepts can be looked at now as the "basic myth of the Constitution" (C. L. B. Lowndes, in 47 *Harvard Law Review* 631); but it had a certain effectiveness before it was generally recognized as a "myth."

<sup>59</sup> Mr. Justice Cardozo frankly admits the identity of the legislative and judicial functions. It is true that he applies this only to the "gaps" in the law, but this is just what certain general constitutional provisions represent to both the legislature and the courts (*Nature of the Judicial Process*).

1. Public hearings on a given candidacy would be ordered only upon a showing to the chairman of the committee that substantial political interests were opposed. At such hearing, the candidate would be entitled to be heard and his political opinions made a fair subject of controversy; the attempted introduction of other considerations would be out of order.

2. The Department of Justice would be required to transmit to the committee in the case of all nominations (a) the report and/or recommendation of a judicial council representative of the federal judges; (b) the report and/or recommendation of that organization of the bar most nearly approximating, in area covered, the jurisdiction of the post to be filled.

The objective of both of these requirements is to "build up" for judicial nominations much the same sort of safeguards against legislative excesses that have already been achieved in the case of appropriations for current expenses. For this, the main reliance must be upon "self-denying" rules of the legislature itself; for the rest, upon administrative articulation. The legislature must "insulate" itself from extraneous pressures and influences at the same time that it provides authoritative channels for expert advice.

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## FOREIGN GOVERNMENTS AND POLITICS

Newfoundland Reverts to the Status of a Colony. In February, 1934, Newfoundland, which proudly boasts that she is "Britain's oldest colony," which has enjoyed responsible government since 1855, and which has been ranked by the Statute of Westminister as one of the Dominions of the British Commonwealth of Nations, voluntarily reverted to the status of a crown colony governed by a commission responsible to Whitehall. The event is without precedent in the history of the Empire. While certain West Indian colonies which have enjoyed representative assemblies have voluntarily given up their elected legislatures,<sup>1</sup> no colony which had attained responsible government has ever before renounced it. The incident is sufficiently unique to be of interest alike to students of the history of the British Empire and of political science in general.

The immediate cause of the changed status of Newfoundland was the financial bankruptcy which stared the island in the face. An enormous public debt which had more than doubled since the War, the fall in the price of fish (Newfoundland's principal export), declining revenues, a gap in 1932-33 of \$3,253,776 between public income and expenditure, and the inability of the government to raise further loans in London or Montreal or New York, had brought the island to its knees. Interest payments on the Dominion's bonds were met in January, 1932, only by advances from the Canadian and the British governments, and in July by a further advance from the British government. A new government elected in the island in June, 1932, made heroic efforts at retrenchment, but in vain. It appealed to the government of the United Kingdom for a royal commission to investigate the condition of the Dominion. This commission, under the chairmanship of Lord Amulree, reported in November, 1933,<sup>2</sup> recommending the suspension of the island's constitution, the creation of a commission government responsible to the government of the United Kingdom, and financial support by the British Treasury. The island legislature promptly agreed and committed political suicide by unanimously requesting legislation by the British Parliament to implement the report.<sup>3</sup>

<sup>1</sup> A. B. Keith, *Responsible Government in the Dominions* (2nd ed.), 11-12, cites the instances of Jamaica, Grenada, Tobago, St. Vincent, Antigua, Dominica, and British Honduras.

<sup>2</sup> *Newfoundland Royal Commission Report*, Cmd. 4480, pp. 54-55 (hereafter cited *Report*). This report, on which the present paper is largely based, is the best survey of the island's political and economic conditions available. It will no doubt rank with Durham's famous report of 1839 recommending responsible government, and other great reports on Imperial problems. It deserves a place in the library of every political scientist for its keen analysis of the working of Newfoundland politics.

<sup>3</sup> Although Newfoundland had not adopted the statute of Westminster, and there-

Thus, democracy in Newfoundland voluntarily resigned in favor of a bureaucracy of civil service experts.

Behind the present financial plight of the island lies unfortunate economic and social conditions and a long history of political incompetence and corruption. Newfoundland proper is about 42,000 square miles in extent, or about midway between the size of Ireland and that of England.<sup>4</sup> Its population is about 280,000, of which 40,000 live in the capital, St. John's, and the remainder are scattered in small communities principally along the east and southeast coasts. For the most part, the people are of west of England or Irish stock, much the same stock by which self-government was nurtured in the American colonies and in most of Canada. But there are profound differences from conditions in other colonies. Though Newfoundland is essentially a frontier community, its people are far from realizing economic equality, as was usually the case in other frontier communities in North America where agriculture has been the principal occupation. On the one hand, there is a comparatively well-to-do merchant and professional class; on the other, the great mass of the people, who live often in conditions of sheer poverty in a country endowed with great natural resources. In recent years, a considerable industrial proletariat has developed about the two large pulp industries, the iron mines of Bell Island, and the more recently established zinc and lead mines of Buchans in the interior of the island. But the largest occupational group are the fishermen, who constitute the gravest social problem. They are for the most part "credit slaves" of the merchant class who supply them with food and other necessities during the autumn and winter, outfit them in the spring, and take their catch in exchange. Prices are set both ways by the merchants, and debt is the perpetual lot of many fishermen. In bad seasons, they may be denied credit by the merchants and thrown on the government for relief.

Unlike the New England colonies, Newfoundland began with no tradition of local self-government, and it has never developed any. The sole municipality is the capital, St. John's; of local government elsewhere, there is none. Government in Newfoundland is therefore highly paternalistic, all local improvements, all social welfare (on which Newfoundland has embarked rather extensively, on paper at least), being carried

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fore technically there was no restriction on Parliament legislating for the Dominion, constitutional practice was strictly observed. Parliament did not act until requested formally by the legislature of the island.

<sup>4</sup> Labrador, its dependency, is about 110,000 square miles, but is very sparsely populated, while its resources are largely unknown. Until recently, Newfoundland's interest in Labrador was deemed to be confined to a narrow strip of sea coast, but an opinion of the Judicial Committee of the Privy Council in a reference on the question of the boundary between Newfoundland and Canada awarded Newfoundland an enormous area inland. *In re Labrador Boundary*, 43 T.L.R. 289.

out by a beneficent government at the capital. This, combined with the fact that there are no direct taxes, even for local improvements, except income taxes, which are paid by only a few, tends to make for an irresponsible and dependent electorate. In addition, through the spoils system of politics which in Newfoundland has become a fine art, all local activities of the central government came to be under the direction of the member from the constituency, or the defeated candidate if he happened to have been of the victorious party. The Amulree report thus describes the result:<sup>5</sup>

"If a man lost his cow, he expected the member to see that the government provided him with another; if he had some domestic trouble, it was for the member to put things right; if he fell ill, he looked to the member to arrange for his removal to the hospital at St. John's at the public expense, to visit him in the hospital where he obtained free treatment, and generally to see to his comfort at no cost to himself. If the wharf in a settlement fell into disrepair, the member was expected to see that the funds were provided by the government to compensate the inhabitants for repairing it; notwithstanding that the material was at hand, that the lack of suitable wharfage was a serious inconvenience to the community, and that the necessary repairs could be effected in a few hours by willing workers, men would stand idly by and would prefer that the wharf should collapse into the sea rather than that they should repair it for their own benefit without public remuneration. . . . Roads, bridges, town halls, and public buildings; all these, and often superfluous luxuries, the government, through the member, was expected to provide and maintain."

"This political system," continues the report, "combined with the effects of the credit system in the fishing industry, weakened the fibre of the people and left them wholly unprepared for the intensive economic depression which was soon to cast its shadow over the Island." During the winter of 1932, twenty-five per cent of the inhabitants were on relief.

The dependent attitude of the electorate was an admirable breeding-ground for the worst sort of party politics. As the report points out, politics has been "modernized," particularly during the past twenty-five years. Politics has become a means for the enrichment of the politician, his family, his friends, and his supporters. There has been a "continuing process of greed, graft, and corruption which has left few classes of the community untouched by its insidious influences." "Electors in many cases preferred to vote for a candidate who was known to possess an aptitude for promoting his own interests at the public expense. . . . They argued that if a man had proved himself capable of using his political

<sup>5</sup> P. 83.

opportunities to his personal advantage, he would be the better equipped to promote the advantage of his constituents."<sup>6</sup>

The administrative system was, moreover, archaic. The spoils system covered the whole civil service. The result was a low standard of efficiency, complete subservience of the administration to the interests of the politician, and a complete lack of coöperation between the departments.<sup>7</sup> In finance, until the disaster struck the island and banks insisted, there was no comptroller system and no adequate system of audit.<sup>8</sup> Sectarian jealousies added to the weakness of the administration. The three large denominations, Roman Catholic, Anglican, and United Church of Canada, long ago worked out a compromise about representatives in Parliament, each being awarded about one-third of the seats. This has been carried over into the cabinet, which by convention must award each group four cabinet posts, and into the public service. If a civil service post be found for a member from one denomination, posts must be found or made for one from each of the other two. So, too, with contracts awarded by the government.<sup>9</sup>

Newfoundland has also been something of a paradise for concession hunters, a situation in part the cause and in part the result of the condition of polities. Railway building in the eighties began the debauch. In two contracts made in the following decade, the government alienated to a private company practically all of the crown lands of any value, together with mineral rights thereon, the whole of the railways, telegraphs, postal service, and coastal shipping service, as well as the sole dry-dock in the island, and agreed to subsidize annually the railway in cash. Fortunately, a new election put in office a government opposed to such wholesale mortgaging of the future of the colony, and the contract was drastically revised. Subsequently, the company went bankrupt and the railway and other services fell into the government's hands. The railway has always had a heavy deficit on its operations, quite apart from replacement. Its total net cost to the Dominion is estimated at one-third of the national debt—although against this, certain compensations such as the encouragement of new industries must be balanced.<sup>10</sup> In later years mineral, pulp, and lumber rights have been alienated with almost as little regard for the future of the colony.<sup>11</sup>

<sup>6</sup> *Ibid.*, pp. 81-82.

<sup>7</sup> *Ibid.*, p. 87.

<sup>8</sup> *Ibid.*, p. 53, 83.

<sup>9</sup> *Ibid.*, p. 88.

<sup>10</sup> *Ibid.*, pp. 67-68.

<sup>11</sup> *Report*, Chap. 7. Says the report, p. 91. "The question of attracting outside capital has thus been approached from the wrong angle; the fact that there can be no more powerful attraction to capital than good government has been either overlooked or ignored. In the absence of good government, inducements are doubtless required and a point is reached where the interests attracted are those represented by concession-hunters and speculators, and reputable concerns are repelled. This is what has taken place in Newfoundland, where ever-increasing inducements have been offered to capital until today few promoters would dream of undertaking any

Since the War, moreover, Newfoundland has embarked on ambitious public works. Vast sums have been spent on roads, ostensibly to attract tourists.<sup>12</sup> Incidentally, the politicians and their friends were none the poorer thereby. An expensive hotel in St. John's, begun by a private company under government guarantee, has fallen into the government's hands.<sup>13</sup> The public debt has indeed more than doubled since the War, in part because of additional capital expenditures, or expenditures in such social services as old age pensions, education, and war pensions; in part because of failure of the government to live within its means. In not a single year since 1920 has expenditure been kept within income, the average gap being \$2,000,000. The annual deficits have been met by further borrowing, and except in one instance no provision was made in these loans for sinking funds.<sup>14</sup>

Says the report: "The twelve years 1920-1932 were characterized by an outflow of public funds on a scale as ruinous as it was unprecedented, fostered by a continuous stream of willing lenders. A new era of industrial expansion, easy money, and profitable contact with the rich American continent was looked for and was deemed in part to have arrived. In the prevailing optimism, the resources of the Exchequer were believed to be limitless. The public debt of the island, accumulated over a century, was in twelve years more than doubled; its assets dissipated by improvident administrators; the people led into the acceptance of false standards; and the country sunk in waste and extravagance. The onset of the world depression found the island with no reserves, its primary industry neglected and its credit exhausted. At the first wind of adversity, its elaborate pretensions collapsed like a house of cards."<sup>15</sup>

In view of such political and financial conditions, the Amulree Commission could see no hope for the island to get out of the morass under its own power. No government which undertook the drastic reorganization necessary could long stand. Revenues were extended to the limit and could not then cover public services and interest on the public debt, which in 1932 amounted to sixty-five per cent of the income. Default would be odious and might impair the credit of other British Dominions. Even default would not solve things, since Newfoundland needed credit badly for necessary reorganization. Canada, which once would have welcomed Newfoundland into the Dominion, could hardly be expected to give her a sufficiently hearty welcome to relieve the debt situation. In any case, public sentiment in the island has always been against union with Canada. There remained the alternative of assistance from the British govern-

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enterprise in Newfoundland without being assured first of such concessions as free grants of land, free entry for his goods either indefinitely or for a prolonged period of years, and exemption from taxation and other restrictions."

<sup>12</sup> *Ibid.*, p. 45.

<sup>13</sup> *Ibid.*, p. 69.

<sup>14</sup> *Ibid.*, p. 45.

<sup>15</sup> *Ibid.*, pp. 43-44.

ment. But assistance could not be expected without guarantee of political good behavior. This was too much to expect of Newfoundland. Therefore the report recommended that the island be "given a rest from party politics for a period of years," and that the government be entrusted to a commission. This commission should establish a modern civil service system, initiate policies for the restoration and modernization of the fishing industry, for improving agricultural conditions, and for conserving the forests and game, as well as other progressive policies, including establishing a system of municipal government.<sup>16</sup>

The financial provisions, which were left largely to the discretion of the British government, have for the time being relieved the island's problems. Under the government's bill, provision has been made for forcible conversion of the public debt at three per cent except where the bonds came under the Colonial Stock Act and were thus trustee funds, in which case the holders have the option of conversion. The new loan at par and three per cent interest is estimated to be equivalent to the market value of the bonds at the old rate at the time the bill was introduced. The loan is also backed by the United Kingdom government. The bond-holders have thus been equitably treated, while the island saves substantially in interest. In addition, the United Kingdom government undertakes to make good all deficits both on interest and on public services until 1936 as a free grant, including advances already made. This—an estimated total of £2,000,000—has been shouldered by the British taxpayer, together with the contingent liability of the island's debt of approximately £19,000,000.<sup>17</sup> These provisions, said a Labor M. P., constituted "one of the worst ramps that has been seen in this country for some time." They were designed to help the bond-holder, not the people.<sup>18</sup> The government's answer was that the credit of the island was essential for its welfare, as well as for the good name of British people everywhere.

Newfoundland has thus found in the British government a fairy grandmother. The present régime is intended to be only temporary, but there is every reason to believe that it will be many years before the island can once again shoulder its debts under a system of self-government. Meantime, the personnel of the governing commission is such that administrative efficiency and sound public policies are assured. Given a recovery of world trade, the economic recovery of the island may be fully expected. The development of sound traditions of self-government is, however, a more difficult feat for a bureaucracy, however benevolent and intelligent, to accomplish.

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<sup>16</sup> Report, Chaps. 7-8.

<sup>17</sup> Speech of the Chancellor of the Exchequer, *London Times*, Dec. 8, 1933.

<sup>18</sup> *London Times*, Dec. 19, 1933. "Ramp" is apparently English slang for the American "racket."

## INTERNATIONAL AFFAIRS

**Revision Clauses in Treaties since the World War.**<sup>1</sup> When the Constitution of the United States was before the states for adoption, James Iredell of North Carolina made the following observation: "The misfortune attending most constitutions which have been deliberately formed has been that those who formed them thought their wisdom equal to all possible contingencies, and that there could be no error in what they did. The gentlemen who framed this Constitution thought with much more diffidence of their capacities; and, undoubtedly, without a provision for amendment it would have been more justly liable to objection, and the character of its framers would have appeared much less meritorious. This, indeed, is one of the greatest beauties of the system, and should strongly recommend it to every candid mind."<sup>2</sup>

The jurist, who was to become an associate justice of the federal Supreme Court, was enunciating a truth of wide application. While his own state has not always chosen to join automatically with others in availing itself of the amending procedure of which Iredell spoke, this does not disturb the validity of his point about the necessity of permitting needed changes.

The point would seem to hold with special force in the field of treaties. For in international relations, treaties must serve a double purpose, since they to some extent take the place of legislation and, on the other hand, are contractual devices for use between states. The tyranny of an unamendable constitution might lead to revolution; the forced continuance in effect of the legal *status quo* as between states might make it more difficult to preserve peace;<sup>3</sup> or, if the peace itself is not threatened, situations might develop which would make more difficult the continuance of ordinary peace-time relations on the most desirable, mutually-cooperative basis.

It has been argued that the reasons which would apply as to modifications of municipal enactments can be applied appropriately in the treaty field, with international agreements coming more and more to include much technical detail, relating to a constantly widening scope of subject-matter, and often having to be drafted in two or more languages of equal authenticity.<sup>4</sup> The rule of *pacta servanda sunt* still being proclaimed as

<sup>1</sup> A paper read before a round table on international relations at the meeting of the American Political Science Association in Philadelphia, December, 1933.

<sup>2</sup> Elliot's *Debates* (1836 ed.), IV, 176; quoted after Orfield in 28 *Michigan Law Review*, 555n.

<sup>3</sup> Cf. Kunz, in 27 *American Journal of International Law*, 648n: ". . . war as a dynamic means corresponds in international affairs exactly to revolution in domestic affairs."

<sup>4</sup> See Jenks, "The Revision of International Labor Conventions," *British Yr. Book of Int. Law*, XIV (1933), 43-64, at p. 44.

the "initial hypothesis,"<sup>5</sup> the desirability of keeping the *pacta* in line with new conditions arising, or even with changing ideas as to international commitments, requires to be set off against the belief that stability and security are essential. It is not enough to say, as one contemporary statesman is reported to have done, that all treaties are sacred but no treaty is eternal. The problem requires to be considered in a more practical way, because of its close relation to others, such as that of a general international jurisdiction.<sup>6</sup>

The phase of the general subject with which this paper will attempt to deal involves only the actual texts of clauses inserted in treaties since the World War. It has been further restricted in two ways. In the first place, it takes up only treaties to which the seven Greater Powers (Great Britain, the United States, France, Russia, Japan, Germany, and Italy) have become parties during the period ending in 1932. This has been done not because of the supposed greater intrinsic importance of engagements between these powers, but because of the fact that in setting procedural methods in a matter such as this, as likewise in that of referring disputes under obligatory settlement arrangements, the size and relative importance of states make a considerable amount of difference in estimating the practical importance of the development.<sup>7</sup> Further restriction has been made by the adoption of a narrow definition of "revision." At the risk of being over-meticulous, the term has been taken to mean the activity of changing, modifying, or partially replacing provisions. This, of course, excludes mere termination clauses if they do not occur in connection with specific provisions looking to changes in the old instruments.<sup>8</sup> It leaves out articles such as are now found in a number of agreements of the United States, to the effect that the treaties shall lapse if either party shall enact legislation inconsistent therewith,<sup>9</sup> although obviously

<sup>5</sup> Cf. Lauterpacht, in *Economica*, No. 37 (August, 1932), pp. 301-320.

<sup>6</sup> Cf. Brierly, "The Function of Law in International Relations," in *Problems of Peace*, Third Series (1929), pp. 297-298: ". . . side by side with the development of legal methods of settling disputes, we need a system for the peaceful introduction of changes into the international order, and . . . without the second of those two reforms an uncompromising insistence on the first would be an actual danger to peace."

<sup>7</sup> The treaties considered include those made by any Great Power with any other state, as well as those between these Powers.

<sup>8</sup> It would exclude, for example, Article 8 of the Locarno Treaty of Mutual Guaranty, with which six other Locarno agreements are coterminous. By the terms of the article, the treaty "shall remain in force until the Council, acting on a request of one or other of the High Contracting Parties notified to the other signatory Powers three months in advance, and voting at least by a two-thirds majority, decides that the League of Nations ensures sufficient protection to the High Contracting Parties" (54 L.N.T.S. 295). (References to the *League of Nations Treaty Series* in the following pages are to English texts in this Series.)

<sup>9</sup> Illustrated in Article 29, par. 3, of the 1925 treaty of friendship, commerce, and

the lapsing of particular clauses might greatly affect the instrument as a whole.<sup>10</sup> Excluded, likewise, are many provisions for mere *supplementing* of technical regulations annexed to a treaty,<sup>11</sup> for certain temporary suspensions, and for the revision of codes or statutes to be drawn up under authorization of treaties.<sup>12</sup> Revision has been taken to include "amendment," although if a commitment be in multilateral form there is clearly a basis for distinction, in that a revised instrument might require new ratifications while an "amended" text might not.<sup>13</sup> Mere provisions for subsequent extensions of treaty terms to new areas, such as self-governing colonies or mandated regions, have not been considered as revision articles. Where arrangement is made for a general revision of former treaties between the signatories (as by Russia in its agreements of 1921, 1924, and 1925 with Persia, China, and Japan respectively),<sup>14</sup> the new agreement has not been included in the list.

Within this restricted definition fall some 200 "revision" clauses in engagements made by the seven Great Powers in the selected period, approximately 60 of them being multilateral in form, and the remainder bilateral. The list does not purport to be an exhaustive one, but it is believed to be representative and to include the great majority of clauses of the kind accepted by the selected states during the post-war period. For the purpose of study, it seems useful to consider the bilateral separately from the multilateral. In both cases, regard will be had principally to procedure prescribed and to the probable legal effect of the arrangements.

Revision clauses in the bilateral treaties have been classified roughly into seven groups. The mildest form is that in which some change or modification is envisaged by some general reference, perhaps not more than

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consular rights with Estonia [44 Stat. (pt. 3) 2379], in a Senate reservation to the 1923 commercial treaty with Germany [44 Stat. (pt. 3) 2132], and in various executive agreements, such as that of 1929 with Canada in regard to civil aircraft (U. S. Exec. Agreement Series No. 2, par. 9). For similar clauses in treaties between other states, see 50 L.N.T.S. 310, 311 (Great Britain—The Netherlands); 51 L.N.T.S. 157, 52 *ibid.*, 311, 331 (Germany with Sweden and Italy respectively). In the American treaties for prevention of smuggling of intoxicating liquors, there is provision whereby an adverse judicial decision in one state might cause the treaty to lapse. See Art. VI of the treaty with France [45 Stat. (pt. 2) 2403].

<sup>10</sup> See recent pronouncements by the World Court in regard to the unity of whole instruments, *P.C.I.J.*, Series A/B, No. 49, pp. 312, 317.

<sup>11</sup> Illustrated in certain parcel post arrangements, such as that between Germany and Great Britain, July 27, 1929 (100 L.N.T.S. 440, 450).

<sup>12</sup> As in arrangements relating to Tangier (87 L.N.T.S. 235) or Memel (29 L.N.T.S. 87, 107).

<sup>13</sup> Jenks, *loc. cit.*, 46n.

<sup>14</sup> 9 L.N.T.S. 401; 37 *ibid.*, 176, 178; 34 *ibid.*, 32, 34. See also the Anglo-Japanese Declaration of July 8, 1920, 1 *ibid.*, 24.

several words, in the instrument; 13 such instances have been noted.<sup>15</sup> In this type of clause, there is sometimes a commitment to give "friendly" or "sympathetic" consideration to suggestions of changes.<sup>16</sup>

A few agreements, mostly on technical matters such as telephone service or frontier traffic, permit modifications to be made by either of the contracting parties, or their respective administrative authorities.<sup>17</sup>

A third type of clause, found in more than 50 treaties in the list, provides for revision by agreement of the two parties, without being very specific as to the exact procedural steps to be taken,<sup>18</sup> a form which might reasonably be construed to permit a state's withdrawal from a burdensome obligation (at least where the other party should refuse even to discuss changes) without invoking the *rebus sic stantibus*—or, as it has sometimes been called, the "notorious"—clause, or even the doctrine of frustration.<sup>19</sup> In exceptional cases, it is stipulated that agreements embodying changes shall be in the form of exchanges of notes, thus apparently making unnecessary another formal ratification.<sup>20</sup> In at least eight German treaties, it is set forth that the parties reserve the right to make such changes as they may think desirable "in the light of experience."<sup>21</sup> One of these permits amendments by mere exchange of letters, provided the changes are not such as to require the approval of the respective legislative bodies.<sup>22</sup> By a Russo-Persian convention of 1923, changes are permitted to be made in the matter of certain charges, but they must be "in conformity with the constitution of each country."<sup>23</sup>

A fourth group of agreements comprises those as to which modifications are contingent upon some future development, such as the varying

<sup>15</sup> Illustrated in a British-Dutch agreement of 1926, 57 L.N.T.S. 42, 48.

<sup>16</sup> See 29 L.N.T.S. 378, 386 (Great Britain-Czechoslovakia); 114 *ibid.*, 191, 329 (France-Switzerland).

<sup>17</sup> See, for example, 101 L.N.T.S. 467, 475.

<sup>18</sup> Illustrated in the Austro-German Treaty Concerning Air Navigation, Additional Protocol, par. 3 (52 L.N.T.S. 126, 132). In this, as in many other clauses within this classification, changes might be agreed upon by national administrative agencies.

<sup>19</sup> On the use of a clause concerning *force majeure*, or frustration, as a solution less dangerous than acceptance of the *rebus sic stantibus* doctrine, see J. P. Bullington, "International Treaties and the Clause 'Rebus Sic Stantibus,'" 76 *U. of Pa. Law Review* (Dec., 1927), 153-177. For statements concerning the clause *rebus sic stantibus* as a rule of international law, see the argument of Paul-Boncour before the Permanent Court of International Justice in the Free Zones Case, *P.C.I.J.*, Series C, No. 17, I, pp. 82, 88, 89, 91, 97, 98.

<sup>20</sup> See 62 L.N.T.S. 135, 137; 63 *ibid.*, 139, 147; 99 *ibid.*, 320, 321; 109 *ibid.*, 315, 317, 325.

<sup>21</sup> 62 L.N.T.S. 135, 137; 63 *ibid.*, 139, 147; 90 *ibid.*, 209, 211; 93 *ibid.*, 127, 128; 93 *ibid.*, 261, 263; 99 *ibid.*, 320, 321; 109 *ibid.*, 315, 325.

<sup>22</sup> 109 L.N.T.S. 411, 419.

<sup>23</sup> 110 L.N.T.S. 334, 336.

of a customs tariff, the acquisition of some new status, or the coming into effect of some other international agreement.<sup>24</sup> In some of these, modification of obligations is apparently intended to be automatic,<sup>25</sup> in others, it may be made at the instance of one signatory,<sup>26</sup> in still others, at the will of both parties.<sup>27</sup> In only one such case which has been listed is there a reference in terms to *force majeure*.<sup>28</sup>

In still another category are placed treaties conferring upon either party the right to demand modification, with the right of denunciation or provision for lapsing of the convention as the alternative to securing some change.<sup>29</sup> In all except one case in this list,<sup>30</sup> time limits are inserted.

More numerous are the agreements in which there is conferred upon each party the right to *negotiate* for revision. These are subdivided into those which provide for negotiation simply,<sup>31</sup> those which go farther and insert time limits,<sup>32</sup> those which permit unilateral suspension of terms if the negotiations do not bring about agreement on changes,<sup>33</sup> and those which say that the negotiations, if unsuccessful, may be followed by termination (lapsing or denunciation) of the treaties.<sup>34</sup>

Finally, there are those treaties which make revision subject to action by, or at least possible after consultation with some international agency such as a fisheries commission.<sup>35</sup>

Some of the listed agreements do not lend themselves readily to any of the above classifications—as one providing that the undertaking shall be “subject to revision” after ten years, in order that “new conditions” of a particular industry may be taken into account,<sup>36</sup> or one setting forth that the parties shall “reëxamine” a particular article at the end

<sup>24</sup> Twenty-three such provisions have been listed.

<sup>25</sup> Illustrated in 44 L.N.T.S. 183, 189. In a war-debt agreement which France made in 1930 with Yugoslavia, she undertook to give that country the benefit of any advantages which might be secured from her (France's) creditors, and to revise the agreement accordingly (104 L.N.T.S. 173, 175).

<sup>26</sup> Illustrated in 21 L.N.T.S. 413, 425 (Germany-Poland).

<sup>27</sup> Illustrated in an Austro-French commercial agreement, 88 L.N.T.S. 23, 79.

<sup>28</sup> Germany-Poland: Treaty for Settlement of Frontier Questions, signed in 1926 (64 L.N.T.S. 158, 159).

<sup>29</sup> Illustrated in the United States-Honduras Treaty of Dec. 7, 1927, 45 Stat. (pt. 2) 2618, Art. XXIX, par. 2.

<sup>30</sup> 12 L.N.T.S. 63, 73 (Germany-Poland and Danzig).

<sup>31</sup> Illustrated in 5 L.N.T.S. 208, 211 (Germany-Saar Basin Territory).

<sup>32</sup> Illustrated in 16 L.N.T.S. 337, 345 (Finland-Russia).

<sup>33</sup> As in the commercial agreement of 1929 between France and Estonia (89 L.N.T.S. 383, 399, 401).

<sup>34</sup> See, for example, the Franco-German commercial agreement of Aug. 17, 1927 (76 L.N.T.S. 345, 492).

<sup>35</sup> Illustrated in 10 L.N.T.S. 187, 243; 19 *ibid.*, 39, 61; 32 *ibid.*, 94.

<sup>36</sup> French-Polish Agreement Regarding the Régime of the Mineral Oil Industries, 43 L.N.T.S. 417, 421.

of a decade.<sup>37</sup> Some treaties with several revision clauses, or with several alternative procedures left open to the parties, have been placed in more than one of the classifications. Within the same classification, the language of clauses may vary considerably; one treaty between Germany and Denmark, for example, permits changes in the light of "considerations connected with international complications";<sup>38</sup> a road convention between Italy and Abyssinia sets forth that the parties may by common consent modify provisions according to the "possibilities and exigencies of the moment."<sup>39</sup>

The bilateral engagements in which revision clauses have been found related to a wide variety of subject-matter. Those dealing with friendship, commerce and consular rights, fisheries, frontier arrangements, customs matters, and visas comprise more than half of the entire list.

Before turning to a consideration of revision clauses in the multilateral treaties of the period, it may not be out of place to direct attention to the fact that these treaties present some decidedly different questions from those just considered. Since they include many instruments designed to take the place of international legislation, the provision made for their progressive development, reshaping, and adaptation to new conditions is, from the point of view of international organization and administration, a matter of first importance. The legal results of revisory effort may be more complicated because of the collectivity of states whose interests are affected. The determination of the status of a particular convention at a given time may become difficult.

In the brief space available for this part of the discussion, it may be possible to consider (1) provisions for the shaping and proposal of modifications, and (2) provisions for adoption of these proposals so as to bring them into effect. The peace treaties themselves have not been dealt with in the present list; their provisions in regard to modification have been discussed in a most instructive way by Professor Tobin in his recently published volume.<sup>40</sup>

The first of the two procedures to be noted with respect to multilateral treaties introduces the whole question of the revisory conference method, although formal conferences are not always stipulated. In a considerable number of conventions, there is provision for the expiry of a designated period of years before any revision may be proposed.<sup>41</sup> A small number of cases have been noted in which there may be a simple

<sup>37</sup> Germany's treaty of friendship with Persia, Feb. 17, 1929 (111 L.N.T.S. 29, 30). The article to be reexamined is an arbitration article.

<sup>38</sup> 10 L.N.T.S. 187, 251.

<sup>39</sup> 94 L.N.T.S. 441, 445.

<sup>40</sup> *The Termination of Multipartite Treaties* (1933), 225-237.

<sup>41</sup> Illustrated in the 1928 Agreement Relative to Exportation of Hides and Skins, 95 L.N.T.S. 358, 363, 364 (Art. 6).

proposal of modification, no detailed conference plan being outlined.<sup>42</sup> Periodic revision may be prescribed, as in the Union Convention for the Protection of Industrial Property, as reshaped in 1925.<sup>43</sup> In other agreements, some 20 in the list, it is set forth that there may be a request or "demand" for modification, which would seem to give the signatories the right to request discussion either of modification in general or of specific changes. Under about three-fourths of these, more than one of the signatories must sponsor the request, the most common fraction being one-third of the states bound.<sup>44</sup>

Revisory conferences may be convened at the instance of the parties themselves acting through a designated signatory, in a few cases at the request of one party state,<sup>45</sup> in others at the request of one-third of the group.<sup>46</sup> Pan-American conventions may be recognized as a proper subject for consideration, with a view to revision, at regular conferences of the American republics.<sup>46a</sup> In more than a third of the approximately 60 instruments whose clauses were studied, the formulation of amendments or modifications is to go forward through the agency of, or at conferences called by, some established international agency, such as the Council of the League of Nations.<sup>47</sup> Under at least five of the arrangements, the international agency may act upon its own initiative, but in the great majority of cases action is taken upon a request of more than one party state. The procedural rules for such conferences are not covered in detail in the revision clauses of many treaties, although in exceptional cases it may be specified that the conference shall fix its own procedural rules<sup>48</sup> or the time for future conferences.<sup>49</sup>

A distinction may be drawn between main articles or, as they are sometimes described, the "principles" of a convention, and the annexed technical regulations, an easier procedure being permitted for proposing changes in the latter.<sup>50</sup>

<sup>42</sup> Parties to the Convention for Suppression of Contraband Traffic in Alcoholic Liquors are committed by Article 12 (42 L.N.T.S. 75, 81) to examine such proposals in a "friendly spirit." Time limits are inserted in most of the engagements grouped with this one.

<sup>43</sup> 74 L.N.T.S. 291, 311.

<sup>44</sup> Illustrated in Article 22 of the 1923 Convention Relating to the Development of Hydraulic Power Affecting More than One State, 36 L.N.T.S. 77, 87.

<sup>45</sup> As in the Convention for the Unification of Certain Rules Relating to Bills of Lading (1924), Art. 16 (120 L.N.T.S. 157, 173).

<sup>46</sup> See the 1924 Convention Concerning Rail Traffic, Art. 60 (77 L.N.T.S. 369, 437). <sup>46a</sup> Cf. 86 L.N.T.S. 246, 252.

<sup>47</sup> As in the Convention Relating to Simplification of Customs Formalities, 1923 (30 L.N.T.S. 373, 403). <sup>48</sup> See, for example, 80 L.N.T.S. 295, 299.

<sup>49</sup> As authorized in the International Radiotelegraph Convention, 1927, 45 Stat. (pt. 2) 2760, Art. 13, par. 2.

<sup>50</sup> Perhaps best illustrated in the 1919 Convention Relating to Air Navigation, 11 L.N.T.S. 174, 196 (Chapter VIII, Art. 34).

Agreements on the limitation of naval armament, being essentially political in nature, are somewhat different in form from the others in which conference procedure is prescribed. As is well known, the armament arrangements were to be reexamined in conference after a stated period, and in the meantime there was to be permitted departure from certain terms in the interest of national security (e.g., by the terms of the so-called "escalator" clause in the London Treaty).<sup>51</sup>

The second part of the process of revising a multilateral treaty, i.e., the actual adoption of the changes proposed in the ways just referred to, is covered in much less detail in the selected conventions of the post-war period. The rule of unanimity of assent in order to bring the revised instrument into effect for all of the group of states is still found in a considerable number,<sup>52</sup> and where it is not found in terms it may be implied from the silence of the conventions in regard to other ways of bringing the changed arrangements into force. In a few exceptional agreements on technical matters, such as a parcel post agreement between members of the Universal Postal Union,<sup>53</sup> new provisions may be adopted by less than unanimity, and the same is true as to changes in the technical regulations attached to some of the conventions.<sup>54</sup> Where modifications do not bind a signatory or adhering state without its express consent, the right of the dissenting state to denounce the revised treaty is sometimes stipulated.<sup>55</sup> An unusual provision is one setting forth that certain changes made by a committee of experts shall be considered as accepted unless at least two governments have made objection within a specified time.<sup>56</sup> The failure of some party states to accept revised conventions may leave them still bound, as toward each other and also as toward the states which do accept the new provisions, under the old instrument.

Space does not permit a further classification and analysis of revision clauses of the post-war period on bases other than those of procedure and legal effect. In a complete study, much besides the texts themselves would require to be considered. Their actual invocation and application, their interpretation by judicial tribunals, diplomatic correspondence concerning their force and effect, and the bearing upon them of general arrangements such as those embodied in the Covenant of the League of Nations, would demand attention.

<sup>51</sup> 46 Stat. (pt. 2) 2858 (Art. 21 of the Treaty).

<sup>52</sup> See, for example, the 1928 revision of the Berne Convention for the Protection of Literary and Artistic Works, 123 L.N.T.S. 235, 259.

<sup>53</sup> 103 L.N.T.S. 79, 123.

<sup>54</sup> Illustrated in the 1929 Postal Cheques Agreement, 103 L.N.T.S. 327, 337.

<sup>55</sup> Illustrated in the Agreement Relating to the Exportation of Hides and Skins, 1928 (95 L.N.T.S. 358, 365).

<sup>56</sup> See the Convention Concerning Traffic of Goods by Rail, 1924 (77 L.N.T.S. 369, 437, Article 60).

Perhaps a complete study would reveal even more clearly that no single technique has been perfected for the revision of all treaties, either bilateral or multilateral. The perfection of such a single technique seems less likely in view of the wide differences in subject-matter and in the relative weight and duration of obligations imposed. Article 19 of the League Covenant (recently referred to by an Austrian publicist as "positive law" embodying "what remained" of President Wilson's ideas on this subject after his failure to get more specific proposals accepted at Paris)<sup>57</sup> hardly provides a formula for use in cases of normal modifications. As to other cases, the efforts made by Bolivia and China before the League Assembly, and the result of these efforts, suggest some substantial difficulties. The kind of unanimity in the Assembly required for operation of the plan, the possibility of use against some treaties to the exclusion of others<sup>58</sup> or of invoking the article to secure a recommendation as to part of a treaty only, the precise effect of a recommendation—these are among the matters which do not seem to be set at rest by the accumulating literature on the Covenant article.

Collectively, the revision clauses accepted by Great Powers during the post-war years seem to reveal some tendency toward further distinction between "fundamental" and detailed, technical regulations, and toward facilitating the changing of the latter. They further show that new international machinery of the post-war period, if it has not been employed directly for the purpose by some such plan as that of Article 19 of the Covenant, has frequently been regarded as a potential agency for assisting toward such changes. Not all treaties require revision clauses, since some of them are executed and therefore "spent" soon after their making. Some distinctive techniques for remodeling multilateral instruments, such as labor conventions,<sup>59</sup> have not been in use for a sufficient length of time to justify generalizations as to their adequacy. Finally, the post-war period has seen, not a relinquishment of the rule of *pacta servanda sunt*, but at least some evidence of a realization that *pacta*, if they are to be really effective, should be consistent with actual conditions, and should thus reflect the continuing will of party states.

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**Internationalism in Current American Labor Policy.** It has long been recognized by students of labor economics that a high standard of living

<sup>57</sup> Kunz, *loc. cit.*, p. 641. Cf. Tseng Yu-hao, *The Termination of Unequal Treaties in International Law* (1931).

<sup>58</sup> See, on this point, Paul de Auer, "The Revision of Treaties," *Transactions of the Grotius Society*, XVIII, 155-174 (1933).

<sup>59</sup> Cf. Jenks, *loc. cit.*

has definite international implications. Since early in the nineteenth century, the advocates of labor reform have attempted to stimulate international action which might bring about a simultaneous elevation of the condition of the workers in order to avoid the use of labor as a factor in competition. For nearly a century now, the international treaty has been pressed as the most suitable means of avoiding competitive disadvantage as a result of social changes, and the International Labor Organization, founded by Part XIII of the Treaty of Versailles, is the fruit of this agitation.<sup>1</sup> It is natural, therefore, that any country seeking to maintain high labor standards should welcome ultimately the possibility of international action in defense of its effort.

While it has been a long-standing policy of the United States to encourage an elevated standard of life for its working population, the international aspects of this attitude have not until recently been clearly faced. With the advent of the administration of Franklin D. Roosevelt, a marked change took place. It is clear that the New Deal has as one of its objectives the restoration of the standard of living. In this, it is not a new departure; but in contrast with the post-war Republican administrations, the "recovery program" has attempted to meet the logic of interdependence. Just as the President recognized that interstate competition within American industry must be eliminated in so far as the conditions of labor are involved, so he assumed that the United States should collaborate as far as possible with international agencies attempting to do the same thing on a universal scale. The United States as a high standard country has everything to gain by helping to raise the standard in other countries in which a distinct advantage is or might be gained by low labor costs.<sup>2</sup>

On June 6, 1934, at the President's request, Senator Robinson of Arkansas introduced a joint resolution authorizing the President to "accept membership" in the International Labor Organization. This resolution was passed finally on June 16, during the closing days of the Seventy-third Congress. The International Labor Conference was then approaching, in Geneva, the close of its eighteenth session. It is natural that the passage of the joint resolution should have created great excitement in Labor Organization circles. It was hoped that presidential action applying for membership would be completed before the end of the Conference, though it became apparent that this would not be done. The election of the Governing Body was postponed on several occasions during

<sup>1</sup> For a brief sketch of the Organization by the author, see *Encyclopaedia of the Social Sciences*, Vol. VIII, pp. 164-167. During 1931-32, the author studied the Organization as holder of a fellowship of the Social Science Research Council.

<sup>2</sup> See Joseph H. Willits, "Possibilities of United States Collaboration with the International Labor Organization," *Annals of Amer. Acad.*, Vol. 166, p. 168 (Mar., 1933).

the Conference in the expectation that the United States, as one of the leading industrial powers of the world, might be elected. Finally, however, the body was elected without the United States, though with the understanding that a government, a workers', and an employers' representative would retire from the body in favor of the United States should that country complete its membership. The Conference, moreover, passed a resolution inviting the United States to become a member of the Organization, giving it the assurance at the same time that it should be bound only by the obligations provided for in Part XIII, and that the Governing Body would complete with the United States the *modus operandi* of membership. In both the congressional and Labor Conference resolutions, it was expressly stipulated that the United States would assume no obligations under the Covenant of the League of Nations.<sup>3</sup> On August 20, 1934, the acceptance of membership in the International Labor Organization on the part of the United States was conveyed to the Director of the Labor Office by Mr. Prentiss Gilbert, American consul in Geneva. The details of our membership will, no doubt, be worked out before the end of the present year.

This development in American relations with the Organization was foreshadowed by other events. In 1931, Miss Mary Anderson, of the United States Department of Labor, was instructed to follow the proceedings of a Labor Conference, but on the eve of the Conference and after her arrival in Europe these instructions were cancelled. No adequate explanation of this apparent lack of harmony between the then Secretary of Labor and other members of the national administration has been given. However, in 1933 Miss Anderson headed a full delegation of four observers who were sent to Geneva to participate in the Conference. Observers were sent also to the Conference of 1934. After the assumption of power by the new Democratic administration in 1933, it became known that both the President and the Secretary of Labor, Miss Frances Perkins, were in favor of closer collaboration with the Labor Organization. The policy of sending observers was the first result of this change of administrative attitude, but it was also assumed that if some way could be formulated by which the United States might enter the Organization, it would be acted upon by the national government.<sup>4</sup>

<sup>3</sup> For the text of the joint resolution, see *Congressional Record, Senate*, June 13, 1934, p. 11681. The resolution passed by the Labor Conference is given in International Labor Conference, *Provisional Record*, 1934, No. 29, p. 464. See *ibid.*, pp. 458 ff., for the discussion of American membership. John L. Lewis, the American workers' observer in 1934, invited the director of the International Labor Office to attend the 1934 convention of the American Federation of Labor, and the director tentatively accepted. *Ibid.*, p. 469.

<sup>4</sup> For further details of American coöperation with the Organization during recent years, see *I.L.O. Year-Book*, especially of 1933, pp. 5-6.

A number of difficulties of a legal and political character emerge as a result of the joint resolution of Congress and the action of the Labor Conference. The normal method of entry into the Organization is through the League of Nations by the ratification of the Treaty of Versailles or those parts of it which establish the League and the Organization. A somewhat less regular procedure would be the ratification alone of Part XIII, by which we would enter the Organization as one of the original signatories of the Treaty. But it was evident that the Administration had no desire to create a political storm by submitting Part XIII to the Senate for ratification. Yet something more than informal action would be necessary if the United States was to expect to become an active member of the Organization. The budget of the Department of Labor might stand the expense of sending observers, but it would not, without special provision, carry the cost of an ordinary membership. Some approval by Congress was, therefore, necessary to enable the government to include without question in the national budget an American contribution to the Labor Organization. This explains in part, no doubt, the policy adopted by the Administration of requesting the introduction of a joint resolution permitting the President to accept membership. Certainly, the Peace Treaty does not contemplate membership being attained by anything short of ratification of the relevant sections of the Treaty.

Further difficulties may be found in the assumption by the Administration of a rather complete autonomy of the Labor Organization in relation to the League. Here is a legal issue which has been discussed from the foundation of the Organization and the League in 1919 and 1920. It can hardly be said that any satisfactory solution has been found. To the present, at least, the attitude of the Secretariat has been that the Organization is an integral part of the League system, though having an independent status on certain matters. The budget of the Organization is passed finally by the Assembly of the League, and the Supervisory Commission was more than ordinarily aggressive in 1933 in its criticism of the principle of Labor Organization autonomy.<sup>5</sup> Osusky, the chairman of the

<sup>5</sup> See *Official Journal of the League of Nations*, Special Supplement, No. 118 (1933), p. 79; C. W. Pipkin, "Relations with the League of Nations," *Annals of Amer. Acad.*, Vol. 166, pp. 124 ff. (Mar., 1933). See also James T. Shotwell (ed.), *The Origins of the International Labor Organization*, 2 vols. (New York, 1934). This significant work is colored by the desire of the contributors to show the independence of the Organization from the League in order to pave the way for American membership in the former. Practically no attention is paid to the bonds which unite the two organizations. For instance, on p. xxv of Vol. I Professor Shotwell significantly omits any mention of the important part played by the members of the Council of the League in the ratification of amendments to Part XIII. In any case, freedom of the Labor Conference to propose amendments to Part XIII is not important if the ratification must be by members who are in turn members of the League.

Commission, remarked that the question of autonomy had become one of routine discussion, but that he must insist that the Commission has duties as to both the League and the Organization. He admitted that the Governing Body of the Labor Office might make those duties more difficult to perform. It is probable, however, that the prospect of American membership in the Organization will be so welcome to the League that any such denial of Organization independence will be carried discreetly behind the scenes.

In the United States, the emphasis on the autonomy of the Organization is quite understandable. It was necessary to prevent the League issue, of burning memory, from being discussed if we were even to think of entering the Organization. The report of the House Committee on Foreign Affairs is undoubtedly too optimistic as to the independent character of the Organization, since it is stated that the "International Labor Organization has no essential connection with other international bodies."<sup>6</sup> In order to avoid a discussion of the League, the case for autonomy has been over-stated. The congressional resolution notes that other states have joined the Organization without joining the League, but this overlooks the fact that the admission of Germany and Austria occurred under special circumstances and that the Labor Office legal advisers are in no wise agreed that there is an unimpeachable right to admit a state as a new member. The American resolution is quite correct in noting that "the United States early recognized the desirability of international coöperation in matters pertaining to labor and took part in 1900 in establishing, and for many years thereafter supported, the International Association for Labor Legislation." But the implication in the material submitted to the House committee that the present Organization is a *mere continuation* of the organization of 1900 is hardly to be sustained in sober argument. The present Organization is, and remains, a creation of the Treaty of Peace and is, further, an essential department of the League of Nations.

The International Labor Conference and the Labor Office were, likewise, disposed to welcome a solution which would not involve squarely facing the issue of whether there is any power legally to admit a new member of the Organization. The controlling article of the Treaty is 387, which states that "the original members of the League of Nations shall be the original members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization." From one viewpoint, this article is positive, in that it provides that the members of the League shall be members of the Organization. But otherwise it is not provided definitely that only members of the League may be members of the Organization. Austria and Germany were

<sup>6</sup> See 73rd Cong., 2nd sess., House Rep. No. 2006. In this connection, see the letter of Miss Perkins appended to the report.

admitted to the Organization by the 1919 Labor Conference in Washington, D. C., but since then no members have been so admitted. Conservative opinion holds that these two states became members in virtue of the conditions of negotiation of the Treaty, and not because of any particular power of the Labor Conference. The Conference has had the opportunity of admitting new members, but it has avoided any action. The withdrawal of states from the League has presented further problems, since Brazil has remained in the Organization though it retired from the League and Japan has likewise elected to stay with the Labor Organization. Germany has announced her withdrawal from both the League and the Organization. Had the Organization been willing to admit members, it is likely that Egypt would be a member by this time.<sup>7</sup>

The closest approach to an opinion on the question arose in the Danzig case, which was heard before the Permanent Court of International Justice. The Free City of Danzig, whose foreign relations are conducted by Poland, wished to become a member of the Organization. After considerable discussion, the question was submitted to the Permanent Court for an advisory opinion. The primary effort of the Labor Office was to prevent a discussion of the question of whether the Organization might admit Danzig. Rather, the issue was, for the Office at least, whether Danzig had such an international status as to make her capable of being a member. The advisory opinion, which was rendered in August, 1930, held by a majority vote that under the existing arrangements the Free City could not become a member of the Organization. The majority of the Court declined to pass specifically on the power of the Organization to admit a new member. However, Judge Anzilotti, in an individual opinion, declared that there was "no doubt that the intention of the parties to the Treaty of Versailles was that membership in the League of Nations and that of member [sic] of the International Labor Organization should coincide, and to prevent a state or political community from becoming a member of the International Labor Organization without at the same time being a member of the League of Nations."<sup>8</sup>

Sufficient information has been given to show at least that there are some legal questions to be raised in connection with the recent developments in American relations with the Organization. The data given make

<sup>7</sup> For information on the problem of the admission of Austria and Germany, see *Official Bulletin* of the International Labor Office, Vol. I (1923), pp. 568 ff. Professor Manley O. Hudson, who was legal adviser to the Conference in 1919, presented the strongest argument against the right of the Conference to admit members. He concluded: "The conclusion must be that membership in the Labor Organization depends upon membership in the League of Nations as a whole . . ." *Ibid.*, p. 581. See also International Labor Conference, *Final Record*, 1919, p. 211, for Professor Hudson's opinion.

<sup>8</sup> *Official Bulletin*, XV (1930), 89. For data on this case, see *ibid.*, pp. 71 ff.

it clear that the policy of the Administration of seeking some kind of informal membership is in accordance with the desires of the Labor Office. But it is clear, likewise, that legal considerations will not be urged against the extent of coöperation proposed by the United States. The exact status of our acceptance of membership in the Organization will be difficult to assess. Perhaps it is not too much to say that it will be *sui generis* in the annals of the League. Membership in the League System is supposed to be attained by the ratification of the international instruments which create this international union. Some advance in analysis may be made if we compare the basis of our membership with that of the executive agreement; only in this case it is an executive agreement between the President and a part of a comprehensive international union which may be designated as the League of Nations System.

As a member of the Organization, certain duties will fall upon the United States. In the first place, we shall be bound to provide an annual financial contribution to the support of the Organization, which will be determined by the Governing Body in general agreement with the principles of League finance. Secondly, we shall be under the obligation of sending each year to the Labor Conference a complete delegation composed of two government delegates, a workers' delegate chosen in consultation with the most representative organization of workers (probably the American Federation of Labor), and an employers' delegate selected in the same manner. There may be more difficulty in determining the most representative employers' organization in the United States. Thirdly, we shall be under the Treaty obligation of submitting within a limited time (at most eighteen months) the decisions of the Labor Conference to the competent national authority. On those matters upon which Congress has jurisdiction, the draft conventions and recommendations will be considered by the national government; on those which fall within the power of the states, they must be submitted to the state governments. The importance of the permanence and constitutionality of the "recovery program" in this connection needs little elaboration. The establishment of a labor standard by the code system would surely give sufficient ground for the ratification by the national government of an international labor convention which normally might fall within the jurisdiction of the forty-eight states. Article 405 of the Treaty, however, provides that in federal governments labor conventions coming within local jurisdiction may be treated as non-ratifiable recommendations.<sup>9</sup>

Within the Organization itself during the past decade certain developments have been appearing which have prepared it in a real sense for future American participation. One may regard these tendencies as the

<sup>9</sup> See my "International Labor Relations of Federal Governments," *Southwestern Political and Social Science Quarterly*, September, 1929.

gradual overcoming of the Peace Conference stamp of regionalism, a regionalism which made the Organization primarily European in attitude, personnel, and in the selection of subjects for Conference discussion. The Labor Office is located in Europe, and the meetings of the Governing Body, the Conference, and committees of experts with few exceptions have taken place on the Continent. The staff of the Labor Office is predominantly European, and of the European elements the French and the British have the largest number of posts and the most important ones. Research technique has been oriented toward the exploitation of European experience, and the experts consulted by the Office have been, for the most part, Europeans. European employers have dominated the employers' group in the Conference, and the leaders of European trade unions have directed the policy of the workers in the Organization. To many over-seas representatives, the Organization has been a European institution in every way except in the much more equal distribution of the financial burden of supporting the League System.

The over-seas representatives have waged a constant warfare on the prevailing distribution of influence. They have demanded a fair distribution of the staff of the Office, not so much to secure additional jobs for their nationals as to assure that the non-European point of view will find satisfactory expression. They have insisted that European industrial and labor experience is not always valid universally, and that draft conventions and recommendations framed for world-wide application must be drawn up with a full consciousness of the experience of the non-European world. Somehow this continuous demand for universalism in the Organization made little headway until about 1932. One reason for the change that can be perceived since that time may be the more cosmopolitan outlook of the present director of the Labor Office, H. B. Butler, who succeeded Albert Thomas in the summer of 1932. Butler has been a careful student of North American industrial problems, and he understands the labor movement in this country. He is a product of the British civil service rather than of Continental parliamentary socialism. But in addition to this, the non-European states were becoming more coherent in their demands. Not only did they propose constitutional changes of great importance, such as fewer sessions of the Conference and Governing Body, but made demands of less significance, such as for more over-seas personnel on the staff, more missions from the Labor Office to over-seas countries, more experts chosen outside of Europe, a greater length of time between various stages in the preparation of draft conventions and recommendations, and a fairer distribution of the cost of traveling to and from Geneva. They asked, likewise, that just as European labor problems had in fact received regional treatment there should be regional treatment of the labor problems of other areas, such as those faced by Asiatic countries.

Definite commitments have now been made by the Director, and some progress has been realized toward satisfying the wishes of non-European countries, among which, of course, the United States must be numbered. The Director has given assurances that in making further additions to the staff the predominance of the European countries will be cut down, and that South American nations in particular will be provided with more representation. A more positive policy of investigation on the spot in labor matters concerning non-European countries has been adopted, and a larger number of over-seas technical experts have been placed on the research committees of the Office and Governing Body. Furthermore, the League is urged to consider the question of the equalization of traveling costs incurred in attending the meetings of the Organization.<sup>10</sup>

One of the most significant recent advances toward giving the non-European members a more important influence in the Organization occurred in June, 1934, when an amendment to Article 393 finally came into effect. This proposal had been pending since the Conference of 1922, but while the great majority of the members had ratified it, there was prolonged difficulty in securing the ratification of the members of the Council of the League. As the membership of the League Council has changed continuously, the Organization has for several years been just short of the adoption of the amendment. The new Article 393 provides for an increase in the membership of the Governing Body from 24 to 32 persons, 16 representing the governments, eight the employers, and eight the workers. Of the 16 persons representing the governments, six must be from non-European states, and two employers' and two workers' representatives must be from extra-European members. The Governing Body was elected in 1934 on the basis of the new provisions in the Treaty.<sup>11</sup>

<sup>10</sup> Most of the information on the over-seas problem appears in the *Minutes of the Governing Body*. See Sixtieth Session, October, 1932, pp. 65, 93, 142-44; Sixty-first Session, February, 1933, pp. 19 ff., 85 ff.; Sixty-third Session, June, 1933, pp. 270 ff.; Sixty-fourth Session, October, 1933, pp. 375-76. In the autumn of 1933, a special section was created in the Labor Office to deal with non-European countries, the present head of which is Mr. Mack Eastman, who is one of the Canadians on the staff. During the Seventeenth Session of the International Labor Conference in 1933 there was a special meeting of the representatives of over-seas countries, who expressed at the time particular interest in the equalization of the cost of sending delegates to Geneva. There was also a special meeting of the delegates from Latin American states. *Ibid.*, pp. 498-499. On the question of the reorganization of traveling expenses, note International Labor Conference, *Provisional Record*, 1934, No. 25, p. 343. As an additional concession to non-European countries, the period between the establishment of the agenda and the meeting of the Conference was lengthened in October, 1932. See *Minutes of the Governing Body*, Sixtieth Session, Oct. 1932, pp. 61-62.

<sup>11</sup> For the text of the new article, see International Labor Conference, *Provisional Record*, 1934, No. 8, Appendices, p. I.

The evidence so far given indicates that progress is being made toward a genuine *rapprochement* with the over-seas countries. Despite the withdrawal of Germany from the Organization and the consequent strangulation of the movement toward ratification of conventions in Europe, the year 1933-34 was one of the most important in the whole history of the Organization in this respect. Eighty-one new ratifications were deposited with the Secretary-General of the League in the year ending in March, 1934; but even more significant is the fact that seventy-four of these came from Latin American members.<sup>12</sup> From the American point of view, the most gratifying development is the great influence which the experiments under the present Administration are having upon the European industrial mind. The *Report of the Director* to the Labor Conference in 1934 shows the importance to the program of the Organization of current American economic changes. When the last Conference refused to pass the proposed draft conventions providing internationally for the forty-hour week in commerce and industry, one of the leading workers' delegates declared that these standards would yet be adopted under the pressure of the United States as a new member of the Organization.<sup>13</sup>

If the world is moving toward economic planning, the policies of the United States, if permanent, will certainly find support from the Labor Office, some of the governments, and the workers' group in the Organization. Never in the history of the Organization has American industrial philosophy and attitude been more akin to that of the Organization than under the present program of national industrial and agricultural recovery. While the United States will, in all probability, resist the tendency of certain European powers to make the Organization an instrument for fostering emigration from Europe, on most questions before the Conference it will not be difficult for this country to give support and also to draw benefit from European experience in the long struggle to conquer the economic maladjustments of the present era.

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<sup>12</sup> International Labor Conference, *Provisional Record*, 1934, No. 16, p. 207.

<sup>13</sup> *Ibid.*, No. 30, p. 498.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

As announced in an earlier issue of the REVIEW, the thirtieth annual meeting of the American Political Science Association will be held at the Sherman Hotel, Chicago, on December 28-29. A preliminary edition of the complete program will be mailed to all members about the end of November. Meanwhile, the program committee desires to announce the topics and leaders of the round table conferences, and to request members who desire to participate in the discussions of one or more of the groups to communicate at an early date with the appropriate leader or leaders. The committee plans that the setting and procedure of the round tables shall be as informal as possible, and with this in view each chairman has been requested to arrange for the discussion of his topic or problem without recourse to set speeches or written papers. Discussion will be opened in each instance by persons specially invited because of their interest in and competence to handle a given topic, but will later be thrown open—so far as time permits—to others desiring to participate; and arrangements are to be made to seat the more active participants in each group around a table. While only one session of each round table is being definitely scheduled, the forenoon of the closing day will be left open for a second meeting of such groups as desire to continue their discussions. The round table list is as follows:

*Thursday morning, December 27:*

"Changing Regional Alignments in American Politics"

Chairman: H. C. Nixon, Tulane University

"Symposium on the Report of the Commission on Social Studies in the Schools"

Chairman: Ben A. Arneson, Ohio Wesleyan University

"Implications of National Planning for International Relations"

Chairman: Frederick L. Schuman, University of Chicago

"The Courts and the Recovery Program"

Chairman: Robert E. Cushman, Cornell University

"The Technique of the Service Survey of Administration"

Chairman: E. O. Griffenhagen, Griffenhagen and Associates, Chicago

"The Changing Financial Status of American Cities"

Chairman: Paul V. Betters, American Municipal Association

"Methods of Civic Reform in Rural Areas"

Chairman: Arthur W. Bromage, University of Michigan

*Thursday afternoon, December 27:*

"Problems of Adult Political Education in the United States"

Chairman: Charles E. Merriam, University of Chicago

"Training for the Public Service in a Planning State"

Chairman: Harvey Walker, Ohio State University

**"Marxism, Leninism, Stalinism"**

Chairman: Oscar Jászi, Oberlin College

**"New Legal Devices in Emergency Administration"**

Chairman: James Hart, Johns Hopkins University

**"Public Relations of National Administrative Agencies"**

Chairman: E. Pendleton Herring, Harvard University

**"Uniform Reporting by Local Governmental Units"**

Chairman: Carl H. Chatters, Municipal Finance Officers Association

**"Administrators and Technicians in Planning: Housing"**

Chairman: Charles S. Ascher, National Association of Housing Officials

*Friday morning, December 28:***"Propaganda Methods of Dictatorships"**

Chairman: Harwood L. Childs, Princeton University

**"The Technique of Commissions of Inquiry"**

Chairman: Luther Gulick, Institute of Public Administration

**"The Future of the Forty-Eight States"**

Chairman: Lloyd M. Short, University of Missouri

**"Current Patterns in Public Welfare Administration"**

Chairman: Frank Bane, American Public Welfare Association

**"Tax Delinquency Studies"**

Chairman: Lent D. Upson, United States Bureau of the Census

**"The Problem of Dual Nationality" (in collaboration with the National Council on Naturalization and Citizenship)**

Chairman: Rinehart J. Swenson, New York University

The summer meetings of the Executive Council and Committee on Policy of the Association were held at the University of Chicago on September 19, each with an exceptionally full attendance. The meeting of the Council was devoted largely to hearing and considering reports of the secretary-treasurer, managing editor of the REVIEW, and various committees; that of the Committee on Policy, to reports from sub-committees and especially to the larger features of a further program of activities in support of which a renewal of the Carnegie Corporation's subvention is to be sought in the near future.

Professor Quincy Wright, of the University of Chicago, is spending the autumn quarter abroad. Between October 29 and November 2, he will deliver five lectures at the Graduate Institute of International Studies, Geneva, on "The Conditions of Peace and the Causes of War."

Professor Marshall E. Dimock, of the University of Chicago, is engaged upon a survey of the Inland Waterways Corporation and will report informally to the Secretary of War, under whose supervision the undertaking is administered.

Professor Ellery C. Stowell, of the American University, is conducting courses on international law at Stanford University during the fall quarter.

At Princeton University, Drs. Fritz Morstein Marx, Douglas A. Campbell, and Henry Reining, Jr., have been appointed to instructorships in the department of politics.

Professor George A. Graham, of the department of politics at Princeton, acted as dean of the summer session of George Washington University in Washington, D. C. His teaching related particularly to the administrative problems of the New Deal.

Drs. Edward W. Carter and Bradford W. West have been promoted to assistant professorships in political science at the University of Pennsylvania. With Dr. Charles C. Rohlffing, also of Pennsylvania, and Associate Dean John G. Hervey of the Temple Law School, they have completed a volume now in press on "Business and Government."

At the University of Pennsylvania, Assistant Professor Edward W. Evans and Mr. Wilson T. M. Beale have been reappointed to Penfield scholarships for the year 1934-35. Mr. Beale is engaged upon a study of British tariff policies, while Mr. Evans is continuing an inquiry into American policy on disarmament.

At the opening of the present academic year, a separate department of government and citizenship was organized at the University of New Mexico under the chairmanship of Dr. Arthur S. White.

Mr. Lyman Moore, who has done graduate work at the University of Wisconsin and Northwestern University, has been added to the staff of the International City Managers' Association.

Returning after a semester's leave of absence spent in studying the government of Shanghai, Professor William C. Johnstone has been promoted to an associate professorship and made acting dean of the Graduate School and School of Political Science at George Washington University.

Dr. Carlton C. Rodee, who recently completed his graduate work at Yale University, has been appointed assistant professor of public administration at the University of Southern California.

Professor Erwin F. Meyer, of the University of Colorado, died at his home in Boulder on June 17.

Dr. Elmer E. Smead, who received his degree at Princeton in June, has become an instructor in political science at Dartmouth College.

Dr. Philip W. Buck has been appointed acting instructor in political science at Stanford University. He is on leave of absence from Mills College.

Dr. Henry Janzen, for two years assistant in the department of political science at Ohio State University, has been appointed assistant professor of political science at Hendrix College, Conway, Arkansas.

Professor Morris B. Lambie, of the University of Minnesota, is on sabbatical leave for the fall term of the current academic year and is engaged in the study of university training for the public service. He will spend the greater part of his time in Washington, D. C. Professor Lambie was in Europe during July and August in connection with his investigation of the same subject, and also attended certain conferences in the field of public administration.

Under appointment by Governor Winant, Dr. Milton V. Smith, of the department of political science at Dartmouth College, spent the summer as personnel officer of the New Hampshire state liquor commission, his particular task being the selection of managers of the new state liquor stores.

Professor James W. Martin, director of the University of Kentucky bureau of business research, served during the spring as tax consultant of the Kentucky interim legislative committee on finance, and has recently been designated director of research for the Interstate Commission on Conflicting Taxation, with headquarters in Chicago.

Dr. Freeman H. Allen, head of the department of history and politics at Colgate University for twenty-six years, retired in June. Dr. Norman J. Padelford has been advanced to a full professorship in government, and is chairman of the sophomore tutorial system installed as part of the new "Colgate plan."

Among delegates appointed by President Roosevelt to attend the international conference of the International Union of Local Authorities held at Lyons, France, in July were Professor Charles E. Merriam, of the University of Chicago, Mr. Paul V. Betters, executive director of the American Municipal Association and of the United States Conference of Mayors, and Mr. Louis Brownlow, director of the Public Administration Clearing House.

Professor Frederick H. Guild is on leave from the University of Kansas during the present academic year and is serving as director of the research department of the Kansas Legislative Council under an arrangement financed by one of the foundations. Organized in July, the research department submitted preliminary reports to the August meeting of the Council and is now engaged in preparing data for use at a November meeting. Mr. Edwin E. Stene, instructor at the University of Cincinnati, has been secured to conduct Professor Guild's courses during his absence.

At a meeting organized by the American Bar Association's committee on the law of municipal corporations, held at Milwaukee on August 27, papers were presented as follows: "Legal Problems Affecting the Non-Federal Phases of the Public Works Program," by Frederick Wiener, Federal Emergency Administration, Washington, D. C.; "State Receivership of Municipal Corporations," by Henry F. Long, state commissioner of corporations and taxation, Boston, Mass.; and "Immunity of Municipal Corporations from Tort Liability," by Professor Edwin M. Borchard, of Yale University.

The University of Washington has created two bureaus of research associated with the department of political science: (1) a Bureau of International Relations, to conduct research in the field of international law and relations, with special attention to the Pacific area; and (2) a Bureau of Governmental Research, to carry on research in public administration, with particular reference to the problems of the state and its local governments. Mr. Maxim von Brevern, recently appointed instructor in the department, is director of the Bureau of International Relations, working under the general supervision of Professor Charles E. Martin, and Professor Joseph P. Harris is director of the Bureau of Governmental Research. Mr. Russell Barthell, recently appointed instructor in political science, serves as assistant director of the latter bureau. Mr. Barthell is executive secretary of the Association of Washington Cities, and will provide research and service for the cities of the state through a coöperative arrangement. Mr. Harald Bergerson has been appointed acting instructor in political science and research assistant in the Bureau of Governmental Research.

During the past year, Mr. Abram Orlow, of the department of political science at the University of Pennsylvania, directed a series of studies on the varying interpretations of the federal naturalization laws. For the coming year he has accepted the chairmanship of a committee which is to make an extended inquiry into the results of naturalization. Several hundred new citizens naturalized in 1930 are to be followed up by a staff of investigators located in six centers of population. At each place a complete record of the naturalized citizen since the year mentioned is to be compiled, showing whether he has become a public charge or has had difficulties with the courts, or whether he has been able to make his way satisfactorily. In each case the inquiry is to be followed by a personal interview, and general conclusions are to be drawn as to the possible need for changes in naturalization policy.

The eleventh summer session of the Students' International Union was held in Geneva, Switzerland, from July 17 to September 1, under direction

of Professor Pitman B. Potter, of the Graduate Institute of International Studies. The program consisted of conferences, round tables, lectures, and visits to the offices of the League of Nations and the International Labor Office. Lecturers and other participants, in addition to Professor Potter, included Gilbert Murray, Malcolm W. Davis, William E. Rappard, G. P. Gooch, and P. W. Martin.

Under the auspices of the department of political science, an "international affairs week" was conducted from July 30 to August 3 at the University of Minnesota. Lectures were delivered by Dr. Stanley K. Hornbeck, Professor Denis W. Brogan, and Professor Quincy Wright. Three round table conferences were held under the leadership of Professor Harold S. Quigley, to which other members of the University faculty and of the local business and professional community contributed. The attendance at both the lectures and the round tables was good and the interest shown excellent.

The New School for Social Research, New York City, received permission in August to transfer all of its property without consideration to a new corporation of the same name chartered recently by the Board of Regents of the state of New York with power of conferring degrees in its graduate school. The former corporation was a membership organization without such power, while the new one is formed under the education laws of the state.

Under auspices of the National Association of Housing Officials, three European leaders in housing reform began on August 20 a round of visits to thirty-six American cities for purposes of inspection and conferences. The members of the group were Sir Raymond Unwin, technical adviser to the Greater London Regional Planning Committee; Ernest Kahn, formerly manager of the municipal housing enterprises of Frankfort-am-Main, Germany; and Miss A. Samuel, member of the Council of the Society of Women Housing Estate Managers of Great Britain.

When its Mayors' Association was formed during the past summer, Georgia became the thirty-third state in which the municipalities or municipal officers are bound together in some kind of association or league. Although the league movement first gained headway among the larger cities of the more populous states twenty years ago, many states with fewer and smaller urban communities have recently formed leagues. In most cases, the organizations have full-time secretariats, which may be called upon for advice on any subject from handbill laws to budget procedures. Seventeen now publish periodicals dealing with city business and problems within their states, and the number of schools for municipal officials and employees—firemen, policemen, water-works superin-

tendents, finance officers, etc.—is steadily increasing. The *United States Municipal News*, bi-weekly of the American Municipal Association and the United States Conference of Mayors, is a clearing house bulletin of inter-city information on new ordinances and other municipal developments culled from the current press of the entire country.

Members of the Governmental Research Association and the American Political Science Association held a conference at Cazenovia, New York, during the period August 27 to September 1. The meeting—which was the first that these two associations have held jointly—was made possible through the coöperation of the Executive Committee of the G. R. A. and the Sub-Committee on Research of the Committee on Policy of the A. P. S. A. The program was informal, meetings being held mornings and evenings, with the afternoons left free for private discussion or recreation. The topics dealt with included: the present financial situation in municipalities; municipal bonds; control of land use in both urban and suburban areas; revamping municipal revenue systems; financing of unemployment relief by states and municipalities; and reorganization of county government. Philip Cornick, of the Institute of Public Administration, presided during the first four days, and R. C. Atkinson, secretary of the governor's commission on county government in Ohio, was in charge of the meetings on county government. About ninety were in attendance, including twenty political scientists.

Under the sponsorship of the Sub-Committee on Research of the Committee on Policy of the American Political Science Association, a regional committee on research composed of members of the Southern Political Science Association has been appointed to encourage and coördinate a program of research growing out of the emerging problems of the Southern region. The Southern Political Science Association, in recent months, has become particularly conscious of vital and productive research projects in the South growing out of the Tennessee River development. The new committee is composed of Professors John W. Manning, University of Kentucky, chairman; C. B. Gosnell, Emory University; F. W. Prescott, University of Chattanooga; C. C. Sims, Middle Tennessee State Teachers College; D. W. Knepper, Mississippi State College for Women; and E. B. Wright, University of Alabama. The committee is now taking an inventory of governmental research in the South, and is attempting to encourage and coördinate a comprehensive research program centering around the present important developments in the region.

In moving into new quarters at 8 West 40th Street, New York City, the Foreign Policy Association, the League of Nations Association, the Woodrow Wilson Foundation, and the World Peace Foundation (which

may be joined later by other groups) have taken steps to carry out a program of closer coöperation among organizations dealing with educational and international affairs. The housing of these organizations in the same building presents a number of advantages. The World Peace Foundation will assume the task of promoting the distribution of the publications of the various organizations; the services of the Foreign Policy Association research department and Washington Bureau will be available to the coöperating groups; and the facilities of the Woodrow Wilson Library will be similarly accessible. The Foreign Policy Association and the World Peace Foundation, moreover, will continue to coöperate in sponsoring committees on policy and in publishing the *World Affairs Pamphlets*. Apart from these measures of coöperation, the Foreign Policy Association will maintain its independence and present policies, being alone responsible for its activities (*Foreign Policy Bulletin*, May 4, 1934).

After spending several months in Cuba studying all aspects of the island's political, economic, and social organization and conditions, a Commission on Cuban Affairs organized by the Foreign Policy Association on invitation of President Mendieta has lately been engaged in preparing its report. The American members include Dr. Raymond L. Buell, chairman, Dr. Ernest Gruening, Dr. M. C. Wilson, Professors Frank W. Fetter, Frank D. Graham, Leland H. Jenks, Wilson D. Smillie, Lester M. Wilson, and C. C. Zimmerman, Miss Helen Hall, and Mr. Charles A. Thompson, secretary. Owing to the critical political situation which developed in the island during the summer, it was not possible to secure the full Cuban representation on the Commission that had been planned; nevertheless, generous unofficial coöperation of every important native group was obtained. With respect to the results of the investigation, the Commission's prospectus says: "Having collected and analyzed the relevant facts of Cuban life, the Commission presumably will wish to make recommendations as to future policy. In this connection, it may have to determine the type of society it envisages for the future of Cuba. Should this society be based on the most advanced form of industrialization, or should Cuba aim at a frugal agricultural existence, offering economic security to the masses but very little wealth above the subsistence level? What rôle should the state play in the development of either form of society? Are Cuba's difficulties primarily due to economic causes beyond Cuba's control, or can these difficulties be met by internal reorganization? Likewise, the Commission may have to make up its mind whether the Cuban government, should it decide to change the economic system, should adopt a policy of expropriation or interfere with private property only in return for compensation? Finally, the Commission may wish to examine what attitude the United States should take toward the

efforts of Cuba at reconstruction and make recommendations concerning future relationships between the two countries.

The study of the Orient by Western scholars has hitherto been rendered difficult by the lack of adequate information respecting the results of research currently published in the Chinese, Japanese, and Russian languages. Since the major work in Oriental studies is being done by scholars to whom these tongues are native, obviously some channel by which it can be quickly conveyed to the Western scholar is necessary. For this reason two interesting experiments just undertaken are worth mention. The National Library of Peiping, with the support of the Chinese Committee of the League of Nations Commission on International Intellectual Co-operation, has begun the publication of a *Quarterly Bulletin of Chinese Bibliography*. This periodical, of which the first number (in a Chinese, an English, and a "combined" edition) appeared during the summer, continues the work hitherto carried on, courageously but inadequately, by *Book News from China*, irregularly issued for the last few years by the Peiping Union Book Store. The editors of the new quarterly have undertaken to provide a most important tool in the implementing of Chinese studies, and, notwithstanding the modestly expressed foreword to the first number, they give every indication of doing the job well. The initial number contained current bibliographies of books published in China, notes of scholarly organizations and undertakings, and special articles. Later numbers will emphasize the bibliographical sections at the expense of special articles. Even more ambitious is a Japanese attempt to provide Western scholars with adequate information concerning the contributions of Japanese scholars in the Oriental field. This year has seen the organization in Tokyo of the *Kokusai Bunka Shinko Kai* (Society for International Cultural Relations). This institution, generously supported by the Japanese, has published an elaborate program of activities, involving the production of translations, bibliographies, abstracts, hand-books, and other implements of study and research. Success with even a small part of the program will place Oriental studies in the West on an entirely new basis. As yet no such formal and systematic arrangements provide exchange of information with Soviet scholars, though both the American Council of Learned Societies and the American Council of the Institute of Pacific Relations maintain constant informal contacts with scholars and learned organizations in the U.S.S.R., and are working as rapidly as possible toward the establishment of better facilities for such exchange.

**You and Your Government Series.** Series Nine of broadcasts presented by the Committee on Civic Education by Radio of the National Advisory Council on Radio in Education and the American Political Science Association, in coöperation with the National Municipal League, will

deal with Trends in Government. The broadcasts will be presented, as heretofore, on Tuesday evenings, at 7:30 Eastern Standard Time, 6:30 Central, 5:30 Mountain, and 4:30 Pacific, each for a period of fifteen minutes. All will be published by the National Municipal League. Reprints of individual programs may be obtained directly from that organization (309 East 34th St., New York City) for fifteen cents each, and the entire series of eighteen may be had for two dollars. The complete program of the Ninth Series is as follows:

Oct. 2: "The Crisis in Local Government"

Charles A. Beard, author and lecturer; former president, American Political Science Association

Oct. 9: "European Local Government"

Charles E. Merriam, University of Chicago

Oct. 16: "Putting Cities on a Cash Basis"

L. P. Mansfield, supervisor, bond dept., Prudential Insurance Company of America

Oct. 23: "Local Government from the Ground Up"

John M. Gaus, University of Wisconsin

Oct. 30: "American Municipal Leagues"

Harold D. Smith, president, American Municipal Association

Nov. 6: "New Rights for Old"

James T. Young, University of Pennsylvania

Nov. 13: "Regionalism and Local Government"

Phillips Bradley, Amherst College

Nov. 20: "The 44 Legislatures of 1935"

Henry W. Toll, director, and Hubert R. Gallagher, research assistant, American Legislators' Association

Nov. 27: "Forty Years of Progress"

From the Annual Meeting of the National Municipal League in Pittsburgh

Dec. 4: "Community Foundations"

Leonard P. Ayres, vice-president, Cleveland Trust Company

Ralph Hayes, director, New York Community Trust

Dec. 11: "Enforcing Tax Collections"

Philip A. Benson, president, Dime Savings Bank of Brooklyn

Russell McInnes, government bond department, Dahman Bros., New York

Dec. 18: "Emerging Problems"

Arnold B. Hall, director, Institute for Government Research, Brookings Institution

Dec. 25: "Progress in Election Reforms"

Joseph P. Harris, University of Washington

Jan. 1: "State Reorganization"

Kirk H. Porter, University of Iowa

Jan. 8: "Protecting the Taxpayer"

Edward A. Filene, president, William Filene's Sons Company, Boston

Jan. 15: "Government Personnel"

L. D. Coffman, president, University of Minnesota; chairman, Commission of Inquiry on Public Service Personnel

Jan. 22: "Federal Help in Local Re-financing"

William Hard, publicist

Jan. 29: "Taxation for Prosperity"

Willard Chevalier, vice-president, McGraw-Hill Publishing Company

Harold S. Buttenheim, editor, *American City Magazine*

**Conference on Research Sponsored by the Sub-Committee on Research of the Committee on Policy.** The Sub-Committee on Research invited some twenty members of the American Political Science Association to participate in a three-day conference on research, held at the University of Chicago on September 16, 17 and 18. The purpose of the conference was to secure a free and stimulating discussion of what seem to be the basic emerging problems of research in the field of government and politics. The committee hoped that there might develop a consensus of opinion as to what are some of the most fundamental problems now calling for research and as to how they might be most effectively attacked by the profession. Particularly, the committee sought advice as to questions of professional responsibility and leadership in the field of research. Throughout the conference, the chair was occupied by Professor Charles E. Merriam, of the University of Chicago.

Three topics were submitted, not as a restrictive agenda, but merely as points of departure for the discussion: (1) adaptation of the democratic process to the speed and technical requirements of the modern age; (2) the problem of areas, regionalism, federalism, and inter-governmental relationships in America today; and (3) the problem of financing governmental functions, with particular reference to the poorer states and communities. The first of these topics was utilized in the opening sessions as a broad province affording opportunity to mark out some of the important phases of the general interests of research. In the discussions of the following day, the second agenda item was narrowed down to consideration of research having particular reference to the Tennessee Valley Authority and to local rural areas. The more particularized discussion of these two focal points of curiosity developed a fair variety of suggestions that could be applied in other directions. On the third day, the last item of the agenda was disregarded and attention centered on summarization of the conference experience and formulation of specific advice to the sponsoring committee.

Obviously, the details of the discussions must be left to the record submitted to the Sub-Committee, and possibly it is in the by-products of the discussion rather than in the actual record itself that largest results are to be found. Broadly, however, the discussion permits of summary under seven rather distinct headings.

The first is the matter of aids to research. Consideration was given to the possible establishment of a periodical informational service to make available to research men information, suggestion, and direction, particularly information from government sources. The possible establishment of

a research clearing house to facilitate exchange of information and suggestion as to research in progress or contemplated was also discussed.

A second topic was that of greater coöperation among research groups and agencies. The various groups and organizations of related workers, both within and without the discipline of political science, were canvassed with a view to modes of possible coöperation.

Reporting and reception of research product, particularly popular and practical use of research findings, was a third topic to which the discussion frequently returned. Consideration was given to the inadequacy of publication facilities, the rôle of the expert in government, the nature of possible contributions of the expert to the governmental practitioner, the instrumentation of inventions and solutions devised by the expert, and means of popularizing the product of research and of reaching the layman leader.

At nearly every session the discussion also returned to the possibility of enumerating challenging questions for research. The proposal was deemed by some to be a means of wholesome direction and guidance; by others, to offer greater likelihood of misdirecting inquiry. The tendency of the conferees to break down broad topics for detailed attack and their interest in unexpected behavior in governmental situations might be thought to point the way to consideration of neglected sectors involved in all topics of political research.

A fifth matter that made its appearance again and again throughout the deliberations was the general nature of research, particularly the type of inquiry appropriate for those immediately in touch with practitioners, the type of research appropriate to the independent worker in the university, and the conditions, characteristics, opportunities, limitations, and interrelation of both divisions of investigation.

Frequently, too, the discussion approached the matter of particular workways of research. Needed development, adaptation, and integration of a variety of approaches and techniques were stressed; and apparently the disposition developed to ask for a later opportunity at which such matters could be considered in connection with the appraisal of several actual pieces of inquiry employing different approaches to the same substantive problem. For such an agenda, a number of items were suggested: the rôle of logical analysis, the rôle of ideology, the rôle of observation and the collection of data, modes of treating data, and the rôle of insight.

Finally, some attention was given to special need for the protection of the general interests of research; the problems raised by increasing censorship in many countries, the proprietary idea among research workers, and the opportunities for creating increasing relationships between researchers and practitioners in connection with the development of general planning staffs within the governmental organization.—H. C. BEYLE.

## BOOK REVIEWS AND NOTICES

*Aspects of Athenian Democracy.* By ROBERT J. BONNER. (Berkeley, Calif., University of California Press. 1933. Pp. viii, 200.)

This volume contains the Sather Classical Lectures at the University of California for the year 1933. Its eight chapters include a description of the political institutions of the Athenian democracy, and more particularly the way in which they worked, with brief references to their historical origin. The greatest amount of space is naturally given to the citizen assembly and the courts, the latter being the key to popular control over the magistrates and therefore the center of the democratic system. In addition to this description of institutions, the author discusses such essential aspects of democracy as freedom of speech and the meaning of citizenship, and also the effects of democracy upon Athenian literature and religion. The emphasis of the book is throughout on the practice of democracy at Athens and not upon its theory, Plato and Aristotle and the Funeral Oration in Thucydides being used as they throw light upon the operation of the institutions, but not particularly to show what philosophically-minded Greeks thought about their government.

The last chapter deals with Athenian imperialism, the relation of Athens to her allies and dependents, and the commercial regulations by which the empire was made profitable. This postponement of imperialism might perhaps be criticized on the ground of historical precision, since it tends to conceal the relation of imperial policy to the progress and fate of democracy in the city. The two were, of course, intimately related, as Professor Bonner suggests in several passages. The arrangement was doubtless dictated by the subordination of historical dynamics to political description.

The same consideration probably accounts for the fact that social and economic circumstances, certainly germane to democracy, are not treated at length, or even referred to very frequently. It would have been enlightening, for example, if the author had recanvassed the much discussed (and much misrepresented) question of slavery, its place in Athenian society, and its bearing on democracy, instead of passing it over with a not very clear sentence or two. It is surely misleading to say that "a large proportion" of Athenian citizens "were men of independent means whose money was the product of capital invested in slaves" (p. 94). Except for the silver mines at Laurium, the Athenian economy did not offer much place for a large-scale capitalistic exploitation of slavery such as this suggests, and the average Athenian artisan who employed a few slaves in his workshop can hardly be described as drawing an income from invested capital. The major criticism of the book is that it

does not add to the chapters on democratic literature and religion an equally thorough study of other social arrangements, especially economic, which were quite as closely related to Athenian democracy.

Within the limits of political description which the book sets for itself, however, it furnishes a careful and judicial statement of the facts, neither giving undue weight to the criticisms that Greek authors, generally unfavorable to democracy, passed upon Athenian government, nor swayed by the too great enthusiasm that modern authors often feel for this first, and perhaps greatest, experiment in free citizenship. Professor Bonner sets forth clearly the main elements of Athenian government, with what is known of the way in which it was operated and by so doing has made a book that will be very useful to anyone desiring a knowledge of a government not much like any of those that exist today and which nevertheless embodies ideas that have never lost their political importance.

GEORGE H. SABINE.

*Cornell University.*

*Grundriss der Allgemeinen Staatslehre.* By OTTO KOELLREUTTER. (Tübingen: J. C. B. Mohr. 1933. Pp. xii, 284.)

"We Germans of today, we National Socialists, perturb the world with what we desire, what we are, and what we plan, much more than Fascism has ever done." Thus commented Professor Friedrich Schönemann, after a brief visit to the United States last fall, in a recently (1934) published address on "America and National Socialism" before the Berlin Academy of Politics. He has, however, added that the "hostile" reaction of foreign public opinion may soon yield to a full "understanding" that Germany is "in fact already on the way" toward a "new German democracy."

Whether this "new German democracy" rests on rationally comprehensible foundations is a question which still puzzles many political scientists in this country. Dr. Koellreutter, professor of public law at the University of Munich, has come to their rescue by offering in his *Allgemeine Staatslehre* a timely and illustrative elaboration of the "authoritarian" state doctrine. He appears to be particularly qualified for such a task. For he is one of the very few academic teachers who identified themselves with the National Socialist cause at a time when that still involved personal exposure. On the other hand, he has, especially as editor of the well-known *Jahrbuch des öffentlichen Rechts*, displayed a profound scientific interest in comparative government ever since he published his instructive treatise on English administrative law (1912). And finally, the author commends himself by never riding on the crest of dogmatic infallibility. In the preface he modestly introduces his book as an "attempt the inadequacy of which is patent to me."

Readers with preconceived views on Hitlerism will perhaps notice with surprise that the author rejects Carl Schmitt's definition of the political sphere based on the antagonism of friend and foe as "individualistic" (p. 14). Instead, his own concept of the political domain centers, entirely free from the conflict motive, around the "uniting" criterion of *Gemeinschaft*, i.e., community. Apart from its programmatic significance, the variation indicates the author's endeavor to adjust his theory of government to the actual social and economic interdependence of men which marks our age. It is that factual interdependence which inevitably transforms the state into the great "harmonizer of dissonances" and which gives weight to the ideological shift from individual emancipation toward civic coöperation. Consequently, Koellreutter applies the same idea of *Gemeinschaft* to the field of international relations. Here, too, the essential purpose of politics is not struggle but synthesis (p. 15). "International law as a legal order is, like every legal order, a guaranty of peace (*Friedensordnung*)."<sup>1</sup> War "has no place in international law" (p. 230). In general, while "law without power cannot hold its ground, power without law becomes arbitrariness" (p. 74).

To the author, the "rule of law" (*Rechtsstaat* in the traditional German terminology) and "authoritarian" government are not incompatible as long as the independence of justice is maintained (p. 109). Yet, in addition, the "rule of law" implies that power may be wielded only according to, or at least within the frame-work of, legal rules imposed by political agencies which are representative of the governed. Just the same, the "authoritarian" state can be characterized as a democracy (p. 163) only in so far as its major problems are settled by representative organs. Koellreutter emphatically affirms the representative nature of the Italian and German *Führerstaat* (p. 116), although the representative process is obviously primarily a factual (extraconstitutional) phenomenon. People and state, he explains, are "as totality" represented by the exponent of state authority (p. 114). Authority, in turn, is no artificial (legitimistic) product, but "arises from genuine leadership" as an "act of grace" and requires "the confidence of the people" (p. 66). Or in more concrete terms: since the "authoritarian" state is essentially a one-party state in which *the party* not only generates the governing "elite" of sub-leaders but also "personifies" the people as a whole, the party head is "at the same time the political representative of the nation" (p. 166). And in order to eliminate dissension from the beginning, the *Führerstaat* must educate the "state youth" "consciously in its spirit" (p. 257) and utilize all means of political propaganda "in the service of the government and its aims" (p. 261). The political atmosphere brought about by this truly grandiose concentration of creed, law, and power can indeed hardly fail to insure complete "*compatibilità*."

It may be observed that any theory of government which features a "charismatic" selection of the "genuine" political leader definitely out-grows the pattern of traditional constitutional reasoning. This the author is probably as willing to admit as he has been disinclined to burden his thought-provoking volume with "senseless theoretical controversies" (p. v) with opponents who entertain a different *Weltanschauung*.

FRITZ MORSTEIN MARX.

*Princeton University.*

*The Method of Freedom.* By WALTER LIPPmann. (New York: The Macmillan Company, 1934. Pp. xi, 117.)

This book is made out of the Godkin lectures delivered at Harvard. In it Mr. Lippmann assures us that the modern state must intervene deeply into the economic affairs of its people. The restoration of the pre-war economy has been made impossible by the "rise of democracy with all that that involves in the way of resistance and activity on the part of the masses of the people. As long as democracy was unconscious of its power, it was possible to let hard times be the purge of previous mistakes. But with democracy become active, there can no longer be a fatalistic acceptance of the purge. The debtor, threatened with the loss of his home, the worker thrown out of his job, the depositor threatened with the loss of his savings, are not willing to go through purgation. They fight back. They will, if necessary, overturn the government and the social order when their own security is destroyed."

The state may prevent the purge from taking place by setting up a system of Directed Economy, or Absolute Collectivism, as has been done in Russia, or by a system of Compensated Economy, or Free Collectivism. In the latter system, individuals are to continue to decide when they will buy and sell, spend and save, borrow and lend, expand and contract their enterprises, but "the government in its economic activities is in effect a gigantic public corporation which stands ready to throw its weight into the scales wherever and whenever it is necessary to redress the balance of private transactions. . . . The purpose of the intervention is not to impose an official pattern upon all enterprise, but to maintain a working, moving equilibrium in the complex of private transactions. In substance, the state undertakes to counteract the mass errors of the individualist crowd by doing the opposite of what the crowd is doing. . . ." Mr. Lippmann recognizes that serious difficulties are bound to arise in the operation of a free collectivism in a democratic state. The crowd which enjoys economic freedom also wields political power. "Will a democracy," he inquires, "authorize the government, which is its creature, to do the very opposite of what the majority at any time most wishes to do?" An affirmative answer to this question must await the reconstruction of de-

mocracy, at least in the United States; for Mr. Lippmann concedes that "free collectivism is as incompatible with political democracy in its present manifestations as are the planned economy of Communism or the corporate state of Fascism." He believes, however, that the establishment of the right to work will, by extinguishing proletarian insecurity, create a society in which free collectivism is possible. The transfer of the initiative in financial matters from the legislature to the executive will help to thwart the selfish activities of transient majorities. But the method of freedom, whatever may be the mechanical devices necessary to secure it, requires a society of "free men with vested rights in their own living."

WILLIAM SEAL CARPENTER.

*Princeton University.*

*Preface to Action.* By GEORGE E. G. CATLIN. (New York: The Macmillan Company. 1934. Pp. 319.)

"This book . . . is not designed to provide any detailed plan of what politicians ought to do, or even to give any dogmatic advice upon how voters ought to vote. It is intended as a provocation to thought on our society and its structure." In Professor Catlin's phrase, "it is a matter, not of academic refinement, but of prejudice and taste." He has "sought merely to give some reasons for the faith that he holds."

It is a reasoned faith, the faith of a social scientist. Its premises are clear: (1) "The departmental scientist can do no more than expound the principles of his subject and indicate the technically best means consonant with them." (2) "No collection of 'facts' . . . , of itself, will decide action. What men actually want will decide that; and what men think they should want or are entitled to want is the most universal and permanent factor in the chaos of what they do want." (3) "What men think they want, in its turn, in large part rests upon . . . the general characteristics of human nature." (4) An adequate political philosophy, therefore, is to be based upon the common experience of the plain man. "Ultimately, political decisions turn on the ends we are aiming at. A discussion of those ends against the background of what we know of human nature is part of our problem. It [is] the main task of this book."

First, then, the author subjects to dispassionate analysis the major impulses of human nature—the erotic, the economic, the assertive, the religious—and the institutional forms necessary for their satisfaction. He concludes that our instinctive life demands, "for its stable satisfaction," "identification with otherness and the interests of others, which demand is the essential manifestation of religious desire." The world needs, and wants, a political religion. To serve durably, this religion must not be a substitute for reason; rather it must be "an emotional matrix which gives reason body." By this test, Professor Catlin, scrutinizes the religions of

the nation-state, Catholicism, Toryism, Fascism, Communism. None answers. The adequate religion must find expression in the appropriate community. That community "must fit within a rational framework . . . of a world organization. . . . It must be homogeneous, at its most intimate a group of friends," most fruitfully, a small group of "co-workers, inspired by common ideas and with faith in persuasion," seeking "to work out these ideas effectively in practical life. In their freedom is the assurance of liberty. In this coöperation is the satisfaction of the religious need. In these movements are to be found the proper objects of contemporary religion. They are satisfactory in so far as they satisfy the tests of reason, in fact inspire impersonal devotion to an ideal and enable the human being to experience the emotion of satisfied love for his fellows."

The author tells us that his book is "designed for ordinary folk." The style, discursive as intelligent conversation, aids this design. But the book does more. In these days when the learning and the function of the social scientists are peculiarly under public discussion, Professor Catlin has done his colleagues a needed service and done it well. While the "ordinary folk" are implicitly cautioned against apotheosizing the principles of politics, the political scientist is eloquently challenged to consider the non-rational elements of human nature as relevant to his discipline. The thesis of Graham Wallas is expanded to demand that the political scientist must be also political philosopher. In Professor Catlin we find a synthesis of the flaming sense of fraternity that was Mazzini with the sense of the revolutionary import of thought that was Marx. It is to be hoped that others, with like attitude of mind, will engage with Professor Catlin in "a personal pilgrimage among political ideas." Values, viewed in the light of the facts of human nature, are "a part of our problem."

ALLAN F. SAUNDERS.

*Scripps College.*

*A History of Bolshevism.* By ARTHUR ROSENBERG. (London: Oxford University Press. 1934. Pp. 250.)

In this exceptionally interesting and well written book, the author, who was a member of the German Communist party from 1920 to 1927, portrays Bolshevik theory and practice against the background of post-war revolutionary movements in Europe and Asia. He contends that Soviet rule, at first democratic in character, was transformed during the period of civil war and war communism into a strict dictatorship of the Bolshevik party, justified on the ground that it represented the interests and desires of the proletariat. Russia, in his opinion, has failed to achieve true socialism. It is "a peasants' and workers' state, organized in accordance with a system of state capitalism by means of which the govern-

ment contrives to maintain its hold over both the basic classes of the population."

The indubitable successes achieved by the Soviet government at home are responsible, in Rosenberg's opinion, for the failure of the world revolution whose leadership the Bolsheviks had assumed with the establishment of the Third International in 1919. The period of militant activity on the part of the Third International, 1919-21, roughly coincided with the period of war communism in Soviet Russia. While conditions in several European countries, notably Germany and Italy, were at that time ripe for revolution, the Third International failed to make use of its opportunity. Its attempt to impose a uniform course of action on Communist parties confronted by a wide diversity of political and economic conditions hampered the development of genuine Communist movements in Western Europe, while its dogmatism alienated former Socialists and Syndicalists who had been converted to Communism. With the introduction of the New Economic Policy, moreover, the Soviet government turned from revolution to economic reconstruction; and in its efforts to achieve this reconstruction it sought collaboration with capitalist states, which offered credits, markets, and manufactured goods. This change in Soviet domestic and foreign policy was immediately reflected by the Third International, which shifted from an offensive to a defensive position. Rosenberg doubts that the Communist parties artificially organized from above in 1919-21 were in any case capable of revolutionary action; but if such capacity existed, it was paralyzed by the policy of the Third International after 1921. The question, as he sees it, became one of whether "the government of a Soviet Russia organized in accordance with the principles of state capitalism would be capable of directing the proletariat of the world in its struggle with capitalism."

The Third International, having lost its value as the spearhead of world revolution, has since frequently embarrassed the Soviet government in foreign affairs. According to Rosenberg, however, the Third International retains a certain significance for Soviet leaders as a mouthpiece for preaching the revolutionary ideals which, in the author's opinion, the Soviet government itself no longer practices. The continued progress of Russia within the framework of the policy "socialism in a single country" is possible, says Rosenberg, only at the cost of Russia's complete separation from world revolution. Nor can the Communists of Western Europe look for leadership to the Bolsheviks, whose methods, progressive when compared with those of Tsarism, proved reactionary when applied to the leading Western countries, "where the proletariat has already learned to create and control its own organizations." The Third International, Rosenberg concludes, has no longer any influence on the course of the

world proletarian movement; "if today the international middle class still fears Bolshevism, it does so because it misunderstands the present nature of Bolshevism.

VERA MICHELES DEAN.

*Foreign Policy Association.*

*Foreign Relations in British Labor Politics.* By WILLIAM P. MADDOX.  
(Cambridge, Mass.: Harvard University Press. 1934. Pp. xv, 253.)

Here is a pioneer study in the exploration of the genesis of those forces which ultimately play upon and help to forge the foreign policy of states. With rare exception, and without parallel for any such period as this—a quarter century—has any attempt been made to discover and portray the growth of a political party's program in any field, and least of all in the area of foreign policy. The author's sub-title, a study of the formulation of party attitudes on foreign affairs, and the application of political pressure designed to influence government policy," indicates the scope of the volume. The period selected, from 1900 to the advent to office of the party in 1924, was a germinal one for those policies which it attempted to put into effect, in many instances successfully, during its brief tenure of the Government front benches.

Dr. Maddox has gone principally to the records of the party congresses and the memoirs of the leaders of the party for his analysis of the forces and conditions affecting the formulation of policy. But he has pushed back of the formal aspects of party action to discover the roots of feeling and interest which underlie specific party statements. Out of the more or less clearly conceived interests of the mass of the party's adherents as a distinct and coherent group of workers and their allies in the coöperative and other movements, there emerged during the first quarter of the twentieth century a set of working principles regarding foreign policy—principles vague in their formulation, and not always precise or consistent in their proposed application. It was largely the work of specific leaders who rose to power within the ranks of the party to give these ideas both content and currency; foreign policy, with its increasing intricacy of detail, came, indeed, to be associated with particular leaders and to be the official platform of the party as these leaders and the groups behind them came to control in the party hierarchy. In this process, various groups played a part: the influence of the international labor movement was important; the old-line trade union leaders gradually acquired specific attitudes upon particular matters of foreign policy; the intellectuals who joined the ranks of the party both before and after the war enriched its understanding of and emphasis upon foreign affairs, and at the same time provided it with experts on many questions.

Out of these elements were forged the party attitudes on an ever-

widening range of interests. It is to the processes by which these attitudes were translated into action within the party itself and upon Parliament and the Government that Dr. Maddox devotes his attention in the second section of his study. The actions of the Annual Conference, the decisions of the executive committee of the party, the influence of such independent groups within the labor movement as the I. L. P. and the Trades Union Congress, and, finally, the "interaction" of the international and national movements, are analyzed with respect to their effect upon the formulation of foreign policy programs. Finally, the author discusses the actual methods of political propaganda in the country and the action of the Parliamentary Labor party while in opposition. His conclusion that, whatever the particular foreign policy, nationalistic or international, that may emerge in the democratic countries, "the possibility that wise and effective group leadership may control a loyal, cohesive, and even uninformed mass," is amply illustrated by his study. It is greatly to be hoped that others will be inspired to undertake similar studies of party action in foreign affairs; no field offers richer opportunity for insight into the political controls in this significant area of politics.

PHILLIPS BRADLEY.

*Amherst College.*

*Sanctions and Treaty Enforcement.* By PAYSON S. WILD, JR. (Cambridge, Mass.: Harvard University Press. 1934. Pp. 231.)

Here is an able monograph on a most important subject which has been considerably neglected by writers on international law. Few have defined *sanctions* with any exactness or examined carefully into their diverse operations. The Austinians, of course, have tried to restrict the meaning of sanction to the penalty provided by law through the courts, and thereby have dogmatically excluded international law from the realm of true law.

Mr. Wild traces in a lucid and scholarly manner the development of the idea of sanctions from the primitive proscription of an outlaw (*sacer*) through the solemn invocation of divine support and retribution, to the modern insistence on sanctions in the form of guarantees and penalties. He vividly sets forth the inherent difficulties in the practical application of economic and military sanctions provided by Article 16 of the Covenant of the League of Nations, and in fact, of any sanctions affecting the interests of millions of peoples in different nations. His emphasis, as the title of the book indicates, is on treaty sanctions, though he does not fail to stress the deeper problem of the sanctions behind the whole body of international law. His conclusions apply to the entire field of international relations and reveal the fundamental truth that the enforcement of all obligations and the protection of all rights among nations is essentially a

*political* question. He demonstrates most convincingly that the inherent vice in any plan for international penalties lies in the failure to realize that no people will readily accept any form of coercion so long as they believe that the status quo is wrong and that the revision of unjust treaties by legal, peaceful processes is unattainable. It is only fair to quote his own words on this most important matter:

"The coercive sanctions proponents set up the peace of the world as their end-all and be-all; it is their absolute, their standard. With cogency, they argue that unless an attempt is made to restrain a nation through a threat of international peace action, there is likely to be war or widespread use of force, and that even if force sanctions do lead to war involving whole peoples vs. whole peoples, conflict would be inevitable anyway since nations would resist attempts by any other states to dominate them. An answer to such reasoning is not easy, but the assault upon this fortress of logic may be directed at its foundation. The fundamental premise of the security logicians is that the peace of the world, namely, the status quo, is something to be preserved at all costs and that the nation which violates it is the "criminal," the aggressor." It is that premise which is questioned. The tests of aggression, the means suggested to date for determining which state is right and which is wrong, and which merits community aid and which does not, are not sufficiently convincing. To brand a state as "criminal" because it violates a frontier or a treaty is to pass superficial judgment without going into the underlying racial and political factors, and to enter into these at the present time is to penetrate into an almost hopeless tangle of historic national grievances and psychoses. It is true that the existence of policemen helps to build up a sense of law and order, but originally before the policeman, there must be *some* consensus as to the kind and type of order desired. There must be agreement upon ends before a community capable of maintaining a police force can come into being. Looking at the veritable jungle-land of world polities today, it does not seem either expedient or reasonable to set police forces operating until more ground is cleared, more thickets of national passion cut down, more chance to see what kind of system is going to emanate from present conditions. This absence of an international standard of justice as regards the fundamental pattern of world society is one of the basic reasons, whether conscious or not, why states are so reluctant to subscribe to police force plans. The tests of aggression appear too superficial, and the dislike of obliging oneself to participate in action taken on behalf of causes of whose rightness one is not so very sure is too intense, to permit much progress along the route of collective action.

"Further, in any true community, sanctions in the form of police action are not the most decisive factor in securing obedience. The latter is de-

pendent upon a will for the community which all the police in the world cannot inculcate. Order and obedience rest upon a foundation far more solid than that of clubs and bayonets. If the only way individuals can be kept in line is by threats of punishment, the community is extinct. Similarly, internationally, states will keep the peace when they *want* to. The creation of that desire on their part is far more important than the making of threats of punishment when it is not clear just why or when punishment is due. The desire for peace is dependent upon the kind of peace, and only time can tell what that will be. Sanctions are important *after* there is more of a community than exists among nations today; they are not the most essential ingredient in its composition. Sanctions were made not to run the community but to be run *by* it for community ends. Lacking the ends, how are very potent sanctions possible?" (pp. 215-218.)

The foregoing extracts, which have not been unduly wrested from their context, may serve to suggest something of the stimulating quality of this book. It opens wide a vast field of exploration and investigation. It deals essentially with realities which must be faced honestly and fearlessly by all internationalists who are seeking to substitute peaceful means of attaining justice for war and less crude methods of coercion. It has suggested to my mind this basic definition of sanction: The ultimate authority of law, and hence the sanction of law, consists in its inherent reasonableness, and, as in the physical world, in the inevitability of cause and effect. Relationships produce their inescapable results. The law that applies with inexorable logic to these relationships and consequences possesses *per se* its own compelling sanction which is independent of the penalties imposed by the state. A penalty which does not possess this intrinsic sanction is of slight value. The whole system of international justice and peace would seem to depend ultimately upon such a sanction.

It seems to be the unpleasant function of a reviewer, partly to prove the meticulous care with which he has read a book, to point out minor errors. This excellent volume has an unfortunate number of blemishes in the form of typographical errors of an egregious sort due to careless reading of proof; though, in all fairness, such slips as references to *Sir Robert Cecil*, and the Battle of the *Claudine Forks* can hardly be classified as merely typographical.

PHILIP MARSHALL BROWN.

*Princeton University.*

*Tariff Retaliation; Repercussions of the Hawley-Smoot Bill.* By JOSEPH M. JONES, JR. (Philadelphia: University of Pennsylvania Press. 1934. Pp. x, 352.)

As a case history of the extent and methods of modern economic warfare, this book is of first-rate importance. While, as the sub-title indicates,

Mr. Jones' prime purpose in his two years of research abroad was to study the foreign repercussions to the Hawley-Smoot tariff, his completed volume is really much broader in scope, providing a lucid and graphic analysis of the operation of the forces which in the countries studied (Spain, Italy, France, Austria, England, Switzerland, and Canada) have pushed commercial policies toward economic nationalism. It is a devastating and uncomfortable picture, and one which will give little cheer to those who minimize the importance of reviving international trade.

Nor, for that matter, will it give cheer to those who have believed in the infallibility of Republican party tariff policy. The author's indictment is scathing, not because he has developed a flair for invective, but because the materials which he has assembled speak eloquently enough for themselves. Raising tariff walls when the world's interests—and our own—demanded that they be lowered, we have fought to retain foreign markets by stressing our right to an unconditional most-favored-nation status, and we have conceded in return only an "equality of negation" which is an indefensible abuse of our sovereign rights. Mr. Jones is not impressed by the various devices—the flexible clause, the penalty provisions, the Tariff Commission—by which the inflexibility of our past tariff system has allegedly been mitigated. In practice, they have all been worse than useless.

The actual cases of retaliation have been carefully studied. In each country, the analysis has gone beyond a collection of officially announced retaliatory measures and the resulting statistics on our export decline. The author has talked with agents for American products, has canvassed the press, and has looked into the propaganda of domestic and other foreign manufacturers who very properly seized upon the American tariff as a convenient weapon with which to destroy established American markets. This study of unofficial and semi-official methods of retaliation by pressure brought to bear upon the potential purchasers of American goods is exceptionally well done.

Any solution for the *impasse* into which our tariff policy has helped to lead us is admittedly difficult. Mr. Jones believes, with Secretary Wallace, that we should end our vacillation and decide upon a definite course of nationalism or internationalism. To achieve the latter or, failing that, a middle course, we must extend the practice of negotiated reciprocal tariffs through which we may speed a return of confidence in the unconditional most-favored-nation clause. Since the use of this clause is not inconsistent with tariff bargaining, American support, honestly directed, may redeem its lost prestige and restore it to good standing in international practice.

In general, Congress may "indicate . . . the lines which American tariff policy shall follow," but should then "voluntarily relinquish to

the President and his executive departments the difficult task of setting tariff rates for the best interests of the whole nation." This is admittedly Utopian, but no one can seriously challenge the author's contention that American leadership in the field of commercial policy cannot be exercised intelligently under our present archaic practice whereby the many permit themselves to be exploited for the benefit of the few.

GRAYSON L. KIRK.

*University of Wisconsin.*

*Australia in the World Crisis, 1929-1933.* By DOUGLAS COPLAND. (New York: The Macmillan Company. 1934. Pp. xii, 212.)

*An Introduction to Some Problems of Australian Federalism.* By KENNETH O. WARNER. University of Washington Publications in the Social Sciences, Vol. 9, pp. 1-312. (Seattle: University of Washington Press. 1933. Pp. xi, 312.)

The strain upon governmental institutions everywhere, during the economic crises of the past five years, has brought to the foreground problems relating to the allocation of functions and financial burdens among governmental units. This has been especially true of federal states, so that these two discussions of recent Australian experience are of immediate interest to American students. Professor Copland's volume comprises the eight Alfred Marshall lectures which he delivered at the University of Cambridge during the autumn of 1933. In published form, they have been fortified by the addition of ample footnotes, numerous charts and statistical tables throughout the text and in the appendix, and a useful chronological table of recent economic events in Australia. In this country, Professor Copland would be called a member of the "brain trust." He is head of the department of commerce at the University of Melbourne, the author of numerous works on contemporary Australian economic problems, and has served on the principal committees (notably that bearing his name) which have made investigations and recommendations during their period of readjustment. Thus he has had exceptional opportunities to explore the various aspects of his subject, and to determine the factors which are most important in presenting it to his audience. The result is an extremely lucid and well-organized discussion of the salient elements in the Australian situation, and the successive policies invoked to deal with them.

As Professor Copland points out, the advent of the depression in Australia was signalized by a sudden drop in export prices and in capital imports. The consequent loss of national income was the central problem, and the distribution of this loss the fundamental condition of recovery. After a year and a half of reliance upon expediency, the country rejected

both whole-hearted deflation and inflation, and sought a judicious combination of these two policies. The middle-ground philosophy, as set forth by various committees of economists, endeavors to restore economic equilibrium by lifting the burden of loss from export producers, and to attain budget equilibrium by economies and restoration of money income. The main features have been a reduction of ten per cent in government costs, real wages, and fixed charges, a measure of currency depreciation, and the expansion of central bank credit. Despite the decentralized constitutional system, and the opposition of organized economic interests, powerful elements of flexibility were contributed to the economic structure by certain institutions of central control which had been developed, notably the Loan Council, the Commonwealth Bank, and the Arbitration Court. The first of these is of particular interest to students of federalism. The Loan Council was the corollary of the financial agreement of 1927 between the Commonwealth and the states (implemented by a constitutional amendment and supplementary legislation by the several governments). Through its control over the borrowing powers of the seven governments, it became, in a period of deficits, the central budgetary authority, and the channel through which the Commonwealth Bank could influence financial policy. As regards refunding, Australia boldly took the stand that, since the actual meaning of the contract had been altered by rapid economic changes, interference with contract was itself an integral element in a constructive policy. In general, Professor Copland looks to improved trade relations with the Far East; he expects a continuance of the lowered standard of living, is skeptical of government interference with free enterprise, and deprecates reliance upon high protection.

Despite its title, Professor Warner's study is essentially descriptive. The first part deals with the relations of the several branches of the federal and state governments in general—constituent, legislative, administrative, and judicial—and also includes a chapter on questions concerning the government railways. The second part of the work is devoted to the main objective of the study, Commonwealth-state financial relationships—the constitutional bases, federal assistance to states, relations with state banks, questions of taxation, and the effects of the tariff. The author has assiduously explored the data upon the multifarious aspects of his subject, and undertaken a great deal of detailed analysis. An excellent feature is the attention devoted to work-a-day administrative questions and relationships, not merely to constitutional foundations. The main body of the study is carried down to 1930, but subsequent developments are sketched rapidly in an appendix. Perhaps the main shortcoming is the failure, relatively, in organizing the material, to make the salient factors and problems stand out clearly enough from the back-

ground of detail, and to interpret upon broader lines. Moreover, federations are bundles of political compromises, and underlying political forces condition constitutional issues and developments. In the present juncture in Australia, these factors might perhaps have been accorded more emphasis, despite the point of view from which the study was undertaken.

A. GORDON DEWEY.

*Union College.*

*The Coming American Revolution.* By GEORGE SOULE. (New York: The Macmillan Company. 1934. Pp. 314.)

In this book, Mr. Soule defines revolution as not a sudden violent political overturn, but a single cycle in a long evolutionary process. It reaches a climax when a new class achieving power must defend its gains by force. The Puritan, American, French, and Russian revolutions are cited as examples.

There follow the two best sections of the book. The first deals with changes in our economic structure—machines and the increased productivity of labor; production for mass consumption in a system which tends proportionately to reduce mass purchasing power; concentration of control; the development of rigidities such as the debt structure, commodities with inelastic demands, etc. The second deals with the crisis: it points out the relative unimportance of the money controversy; makes an analysis of Hooverism—a class phenomenon of which Hoover was merely the public representative; analyzes the New Deal—the failure to reform the banking system fundamentally, the deflation of wages while maintaining interest, the establishing of codes drafted by and for employers, enacting social legislation without adequate enforcement machinery, and the rise of the white-collar and professional class.

Mr. Soule concludes with, in his own words, "speculative guesses." They are: there is likely to be a business revival in the midst of industrial and social depression; a social-reform movement is the usual concomitant of the twilight of capitalism; Communism has neither power nor momentum in the American social order; the materials of Fascism are abundant (aggressive labor activity will likely turn our present economic Fascism into a definite political form); and finally: "Just as feudalism was compelled in the end to give way to the rise of the middle classes and capitalism, so capitalism must in the end give way to the rise of the working classes and Socialism."

Social prediction must rest upon a correct and accurate analysis of the factors determining the flow of events. Mr. Soule's analysis is excellent, but not altogether accurate and not complete. The revolutions which he describes as the rise of the commercial and industrial classes

to power are not comparable with the Russian revolution in the sense of following the formula which Mr. Soule develops for revolutions: the crumbling of one class accompanied by the rise to power of another, climaxed by a brief violent struggle as the balance of power shifts. Certainly the coming into power of the present Russian rulers is a phenomenon vastly different from the seizure of power by the commercial and industrial classes. In this same connection, it may be doubted whether the white-collar and professional class, which Mr. Soule so often mentions, is the prospective candidate to take power from the capitalists.

A second, and more important, point is that Mr. Soule has almost entirely omitted an analytical consideration of social psychology. I believe this to be of fundamental importance, because such movements as, for example, the consumers' coöperative movement, or any genuine form of Socialism, require a good deal of *esprit de corps*. With the decline of trade unionism and the rise of the industrial union, the need for which mechanized industry is making plain, it becomes increasingly difficult to organize the mass of men for coherent and unified action over a long period of time. Practically every analysis of the decline of Rome refers to this aspect of social psychology—the lack of dynamic for any popular movement to overcome the weight of the military and the bureaucracy—both of which factors are receiving increasing employment under the New Deal. There is the suspicion that the coming American revolution may consist of long decades of administrative turmoil under the tutelage of an autocratic politics, the handmaiden of an equally autocratic capitalism whose dynamic virulence will have declined, but whose petrified forms will long determine the general outlines of our society.

HARVEY PINNEY.

*New York University.*

*A History of the Vice-Presidency of the United States.* By LOUIS CLINTON HATCH. Revised and edited by Earl L. Shoup. (New York: The American Historical Society, Inc. 1934. Pp. viii, 437.)

This book is an elaborate and detailed historical exposition of the political events which have surrounded one of the nation's most obscure offices, and represents the first comprehensive attempt ever made to bring to light the many and varied experiences of the "shadowy creatures" who have humbly performed the functions of this "ill-conceived" office. The study was begun by the late Dr. Louis Clinton Hatch in 1927, and was unfinished at the time of his death in 1931. The type-written manuscript was taken over by Professor Shoup, and although handicapped by the unavailability of the author's original notes and long-hand text, Professor Shoup revised and edited the textual matter and completed several of the unfinished concluding chapters.

The subject-matter is presented in two parts, the chapters in Part I dealing with the origin of the vice-presidency; the vice-presidential oath and inauguration; the varied relations between the several presidents and their "heirs apparent"; the succession to the presidency; the social and ceremonial duties of a vice-president; and his rôle as presiding officer of the Senate. In developing these topics, the authors apparently gathered bits of information scattered here and there over the whole period of our national history, and carefully pieced them together to form an interesting story never before told.

The second and major part of the work is an account of vice-presidential nominations and elections, chronologically arranged, and somewhat resembling in method of treatment Edward Stanwood's *History of the Presidency*. The forces responsible for the nomination of certain persons as the vice-presidential candidates of the several political parties, together with a short characterization of each candidate, popular reaction to the nominations, and accounts of the various campaigns and elections are clearly and ably presented.

In concluding their study, the authors point out that in general the vice-presidency has worked "true to the plan" of the framers in that it has provided "a succession to the executive leadership of the nation . . . free of legal doubt, and prompt and automatic in operation." As to the records of the six vice-presidents who have actually succeeded to the presidency, it is observed that their executive abilities "struck about an average for the office," with "one administration [that of Andrew Johnson] representing the extreme of ineffectiveness, another [that of Theodore Roosevelt] standing among the ablest, and four [those of Tyler, Fillmore, Arthur, and Coolidge] thrown in with the colorless mediocre." It is suggested further that "greater care on the part of party managers in the choosing of vice-presidential candidates is needed." However, so long as "the nomination is only a pawn in the winning of a doubtful state," it seems unlikely that nominating practices will be improved until we abandon our outworn electoral system for "some form of direct popular election. . . ."

Taken as a whole, the volume contains a vast amount of historical information, and is a useful and welcome addition to the scanty published materials dealing with the subject. In this sense, it is a real contribution. However, the study fails to present any new constructive proposals for remodelling or improving the office of the vice-president. Perhaps its value as an historical study is somewhat lessened by the fact that although there are a few scattered footnotes, no bibliography is furnished to indicate the nature of the source materials used. From occasional references in the text, it appears that the chief sources were the biographies and letters of the presidents and vice-presidents and their contemporaries,

and newspapers and magazines. There are few references to indicate whether the writers made any extensive use of the Congressional documents in dealing with the relations between the vice-president and the Senate, or of the official proceedings of the several party conventions in discussing the nominations of the vice-presidents.

Although the reviewer believes that this is an exhaustive and thorough study, it is suggested, without intending to detract from the excellence of the study itself, that most of the information presented has little practical significance. One may close the covers of the volume in perfect harmony with the opinion of Woodrow Wilson that the "chief embarrassment" in discussing the vice-presidency is "that in explaining how little there is to be said about it one has evidently said all there is to say."

ALDEN L. POWELL.

*University of Illinois.*

*Election Administration in the United States.* By JOSEPH P. HARRIS. (Washington: Brookings Institution. 1934. Pp. xi, 453.)

In a democratic state, the electoral process is, of course, of central importance. Dr. Harris made a notable contribution to the better understanding of this process by his *Registration of Voters in the United States*, published five years ago. On the same generous scale, his present work is an even more valuable contribution. After all, registration is a preliminary; the election's the thing.

Overhead organization and the rank and file of election officials, the conduct of elections, ballots, voting machines, absent voting, the canvass, recounts, and election costs are the principal topics discussed by Dr. Harris. From a picaresque point of view, the most interesting of his chapters is that devoted to election frauds in which, as usual, Philadelphia ballot-box stuffers are given stellar rôles. A Model Election Administration System, previously published as a committee report of the National Municipal League, is also reproduced. From the practical point of view, it is the most important chapter in the book. A brief discussion of election statistics in the United States completes the volume.

Dr. Harris has handled the immense documentary material of his subject, including the election laws of our forty-eight commonwealths, with consummate skill. In addition to legal texts, he has drawn largely upon actual observation, also from conversations with election officials, members of reform organizations, and well informed citizens, and finally from books, pamphlets, periodicals, and newspapers. Just as the publication of his study of registration procedure was followed by numerous improvements in that field, it is not too much to hope that the present volume will become an arsenal of facts, arguments, and definite reform

proposals for all interested in the betterment of our election administration.

There is nothing hypercritical in the attitude of Dr. Harris toward American elections in general. Frank as he is with regard to certain persistent evils, his discussion as a whole does not give aid and comfort to those advocates of dictatorship who cannot mention a popular vote without frothing at the mouth. On the other hand, all improvements made in our election procedure are duly noted, in particular the elimination since 1900 of violence and, to a less degree, of fraud. As to the debit side of the ledger, full but not alarmist treatment is given to our badly organized election system, cluttered up with legislative antiques and manned by an inferior personnel—hence a system that, especially with our too numerous elections, is excessively costly and, except where voting machines are used, much less accurate than is desirable.

Perhaps Dr. Harris bears down a bit too heavily on the last-mentioned point. No doubt bank clerks are far more accurate than polling clerks. There are several fairly obvious reasons why this is the case. On the other hand, many banks have not been conspicuously successful of recent years in repaying depositors the sums so neatly and exactly set down in passbooks. And despite all the evils of election procedure, there is much more popular confidence in it than there was in the banks of the United States until deposits were guaranteed by the action of popularly elected governmental authorities.

Substitution of filing fees for direct primary petitions is objectionable from the point of view of minority parties. Without ever electing a candidate, the latter make valuable contributions to our national life. Nor during a considerable experience with the circulation of nominating petitions has the present writer discovered that the average person will usually sign anything placed before him.

In his final chapter, Dr. Harris observes that "elections, which are the basis of our many governments, are important enough to warrant the publication of systematic, orderly, regular, and complete statistics." Many a student has made a similar remark, perhaps in shorter and uglier words, as he has leafed through the very defective compilations of newspaper almanacs. Why should not the American Political Science Association appoint a committee to push the detailed plan which accompanies this valuable suggestion, not only at our state capitals, but also at Washington? Perhaps in time our national government may produce a statistical treatise as creditable as F. Giovanoli's *Statistik der Nationalratswahlen*, published by the Swiss federation in 1929.

ROBERT C. BROOKS,

*Swarthmore College.*

*City Government in the United States.* By CHARLES M. KNEIER. (New York: Harper and Brothers. 1934. Pp. vii, 482.)

Professor Kneier's text on municipal government follows the conventional scope and arrangement found in similar texts by Munro, Anderson, Reed, Macdonald, and others. It is designed to meet the needs of the college undergraduate in the first course in municipal government. It does not deal with the functions or activities of cities, but is confined to such topics as the growth of cities, the relations of the city to the state, municipal elections and politics, forms of government, and civil service.

There are, however, several chapters dealing with topics usually discussed only briefly and incidentally in similar texts, such as urban representation in state legislatures, the relation of cities to the national government, and public opinion. The problem of state administrative supervision over cities, of particular interest today, is well set forth in a special chapter, which covers the recent developments in this connection.

Eight chapters are devoted to suffrage, elections, nominations, and the other political aspects of city government. The author states that the text is designed to present the government of American cities as a problem in democracy. One wonders whether such extended treatment does not constitute an undue duplication of other courses, e.g., on political parties and on state and national government. Perhaps some duplication is unavoidable as long as political science courses dealing with geographical units of government are offered, but it would seem preferable to reduce this duplication by minimizing or omitting those topics which are treated in other courses. The fundamental solution awaits the reorganization of political science courses along functional or subject lines.

The text under review is especially well documented. The author not only cites very extensive sources in the footnotes, but presents many terse quotations, particularly to indicate different points of view. The references are up to date, and particular attention is given to recent events.

Several minor criticisms may be offered. Two chapter titles are somewhat misleading. The second chapter, on "The Political Consequences of Urbanization," really deals only with the increase in the cost of city government, and the chapter on "Administrative Organization" is devoted almost entirely to civil service. More than half of the chapter on city councils is devoted to proportional representation, which would hardly seem warranted in view of the fact that only three cities in the United States use P. R. The author presents an amazingly large amount of factual detail, much of which deals with subjects constantly changing, and hence inaccuracies are inevitable. For example, the table on p. 188, showing the frequency of registration in the largest cities in the country,

is quite out of date, many states having recently adopted permanent registration.

The student, or general reader, will find this book well adapted to acquaint him with the important problems of municipal government. It is superior in several regards to the other excellent texts dealing with the same subject, particularly in its wealth of factual information, its copious references to source materials in the footnotes, its extended treatment of recent developments, and its impartial and scholarly treatment of controversial issues.

JOSEPH P. HARRIS.

*University of Washington.*

*The General Welfare Clause; A Study of the Power of Congress under the Constitution of the United States.* By JAMES FRANCIS LAWSON. (Washington: The Congressional Press. 1934. Pp. 388.)

This is the second printing of a volume which was privately printed and originally issued in 1926. In the preface to the second printing, the author explains that it is "the outgrowth of more than fifteen years of experience in legal work for the United States." His thesis is that the power granted the Congress in Article I, Section 8, "to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; . . .," is what it purports to be, i.e., "a general grant of unlimited power to be utilized by Congress in its own discretion for the common defense and general welfare of the United States." Mr. Lawson boldly asserts that judicial decisions to the contrary are mostly *obiter dicta*. He looks upon the doctrine of "limited government" as erroneous and fraught with danger to the American people, and declares that "the sole rule of construction adduced to uphold it is rejected by the Court in dealing with its own grant and with the executive power."

The author devotes a long chapter to the proceedings of the Constitutional Convention of 1787, particularly as preserved in Madison's *Notes*, and reaches the conclusion that "no fair-minded student of these records can conclude that this clause [the general welfare clause] came into the Constitution as a meaningless generality, or as a limitation upon the taxing power." He answers the Tenth Amendment by saying: "If the power to provide for the general welfare is expressed in the first of the enumerated powers, and not excluded by any other clause, it is a delegated power, unaffected by the Tenth Amendment." He declares that "the powers of Congress are largely concurrent with those of the states, and are given in full expectation that they will be called into operation only after failure of state legislation to accomplish the objects for which the powers are designed."

Although the author does not specifically mention the "New Deal" legislation, he appears to have it in mind in his preface, when he says that since the first printing, "the people of the country have with surprising unanimity turned to the federal government for relief from economic ills, in a movement so momentous as to be revolutionary, and so determined as to outlast any emergency." "New Dealers," grasping for constitutional straws to support their aims, will find much comfort in the author's logic and in the voluminous citations and quotations which he has amassed to sustain his thesis. Perhaps the fears of Elbridge Gerry, Luther Martin, and George Mason that the federal government under the Constitution would be able to do as it pleased are about to be realized under a new interpretation of the general welfare clause.

FRANK E. HORACK.

*State University of Iowa.*

*The Sales Tax in the American States.* BY CARL SHOUP AND STAFF ASSOCIATES, under the direction of Robert M. Haig. (New York: Columbia University Press. 1934. Pp. xxv, 833.)

Perhaps the most obvious characteristic of this work by Professor Shoup and his associates is its timeliness. The second is its failure to be up to date. The former arises from the character of the undertaking; the latter not from carelessness on the part of the authors, but from the nature of the subject-matter with which the investigation is concerned. There has been so much gross sales tax legislation recently that, although this volume appears to have been revised after being set up, it fails to include a considerable volume of sales tax history of the present calendar year.

The study resulted from a grant made by the Rockefeller Foundation for the purpose of outlining the growth of the sales-tax movement and of analyzing some of its results. The group of scholars to which the study was entrusted has done a magnificent job, and it may be said that the \$28,000 devoted to the investigation has purchased at least as much as could reasonably have been expected.

Part I, comprising the first one hundred pages of the volume, constitutes a summary of the results of the entire study, made by Professor Shoup. From the point of view of one interested in the results of the investigation, as distinguished from the research student concerned with both findings and methodology on the one hand and the administrator who needs details on the other, this first part constitutes a sufficiently full statement. In the last chapter of this summary (pp. 100-108 inclusive), Professor Shoup has indicated his own evaluation of the state gross sales tax in explicit terms. In this conclusion, Professor Haig, under

whose general direction the investigation was conducted, concurs (p. vii).

Among other things, Professor Shoup says: "In common with most professional students of taxation in this country, the writer has had an unfavorable opinion of the sales tax, although he has not believed it to be by any means unworkable or impracticable with respect to raising considerable amounts of revenue. The results of the present study have caused him to favor the tax even less than before, chiefly because of the indications found with respect to the distribution of its burden. As an emergency source of revenue, the tax has the undeniable advantage of yielding a certain amount of money quickly; but it is not the only tax possessing this virtue. It should not be difficult for the professional student, though removed from the immediate arena of contest, to sympathize with the actions of legislators and others in many states who have been trapped by constitutional limitations on the taxing power and by the threats of articulate and powerful groups who would be injured by resort to forms of emergency revenue other than the sales tax. Nevertheless, in the writer's opinion, the sales tax as an emergency form of revenue, and certainly as a permanent part of any state's tax system, marks an unnecessary and backward step in taxation" (pp. 107-108).

Part II (pp. 111-317 inclusive) constitutes a brief summary of the factual material bearing on the development of the sales-tax issue in each of the states which, prior to about November, 1933, had developed a strong gross sales tax movement, whether a statute had been enacted or not. Each of these discussions follows a uniform plan of presentation. After a brief introductory statement, there is an outline of the development of the fiscal situation since 1929, followed by a consideration of the development of the sales-tax issue as such. The general outline of these statements appears to be surprisingly accurate, although some errors of detail have been noted. The discussions are based on field work done by members of the staff. In the case of each state concerned, the plan of study has been to discuss the matter fully with several individuals competent to represent all shades of opinion.

From the point of view of research methodology, the most interesting part of the study is Part III. Here an attempt is made to apply the census method, for example to ascertaining business policy toward shifting, to ascertaining the influence of administrative propaganda, to learning of the adjustment to the tax by alteration of business methods, to discovering incidental burdens imposed by the tax, and to understanding the attitude of various economic groups toward the tax. In applying this method, the authors have selected a generous sample in each of three states—New York, rate one per cent; Illinois, rate two per cent; and Michigan, rate three per cent. In the main, the results of the canvass are

essentially what the tax student would expect. For instance, it appears clearly that shifting is more successful at a rate of three per cent than at a lower rate; likewise it is apparent that merchants are not interested in having higher rates in order more successfully to shift the tax.

The fourth section of the report deals with legal issues in state sales taxation. This discussion is very much less academic than such discussions usually prove to be. It deals directly with problems relating to the administration of the tax as well as to the larger constitutional issues involved. However, matters of making regulations are more emphasized than problems of constitutional theory, such as the application of the interstate commerce clause.

The appendices include useful discussions of methodology, a discriminating analysis in some detail of fiscal developments in the states concerned since 1929, and samples of the questionnaires used in the statistical investigations. There is also a good index which will facilitate use of the report by administrators and, it is to be hoped, legislators.

JAMES W. MARTIN.

*University of Kentucky.*

*The Quest for Security.* By I. M. RUBINOW. (New York: Henry Holt and Company. 1934. Pp. 638.)

This is an attempt to put in popular form the case for industrial and automobile accident compensation, health insurance, old age pensions, unemployment insurance, and survivor's insurance. In the author's opinion, the New Deal will fall far short of its promise unless it gives the American people greater security through social insurance. Mr. Rubinow has been a close student of social insurance for many years and is well supplied with both information and argument.

A few of the author's views on unemployment insurance may here be presented and commented upon. Mr. Rubinow is a vigorous proponent of unemployment insurance—European model—as a solution of the unemployment problem. He is skeptical of public works and "make work" as a solution because these proposed remedies are "too expensive." They involve large expenditure for materials and payment of wages on a scale much more generous than the payments contemplated by either insurance or relief.

The system of plant reserves provided by the Wisconsin unemployment compensation act is, we are told, weak and unsatisfactory. Its main purpose, says the author, is prevention of unemployment, and prevention is possible only to a very limited extent. Both employees and government should contribute to the insurance fund, and above all, funds should be pooled so that their full strength will be available to alleviate any unemployment, no matter where it occurs.

Concerning the first conclusion, many will feel that insufficient weight is given to the wealth which idle employees might produce if properly set to work. Particularly if we are in for as much chronic unemployment as many believe, wise government expenditures to give people work may be good economy.

The Wisconsin law, in the reviewer's opinion, was not enacted mainly as a device for preventing unemployment. At least two other purposes were equally present. One was to compensate unemployment and the other was to make unemployment (within reasonable limits) an industrial cost to be paid for by the consumer of goods in the production of which unemployment is involved. The author entirely ignores the last purpose. It seems entirely reasonable to assess a certain amount of the cost of unemployment to the industry in which it occurs. Beyond that, unemployment is a public problem and may be paid for by insurance or relief or in other ways. Thus the Wisconsin law appears to the reviewer to establish a sound principle and not to lead "into a blind alley from which many steps may have to be retraced."

This book deals with many controversial subjects and the general reader will probably disagree with the author at many points. But it is a very able and scholarly treatise by a thoroughly social-minded author upon an extremely important and timely subject. It deserves to be widely read.

HAROLD M. GROVES.

*University of Wisconsin.*

*Conclusions and Recommendations; Report of the Commission on the Social Studies.* A. C. KREY, CHAIRMAN (New York: Charles Scribner's Sons. 1934. Pp. xi, 168.)

*Civic Education in the United States.* BY CHARLES E. MERRIAM. (New York: Charles Scribner's Sons. 1934. Pp. xxii, 196.)

On the pedagogical side, there will be little criticism of the findings of the Commission on the Social Sciences except from sectarians whose toes have been trodden upon. Most teachers in this field share the skepticism of the Commission concerning various new forms of tests now widely advertised and employed; they also share its preference for content over methodology; finally, they will be inclined to agree that sundry schemes of "pedagogical prestidigitation," e.g., the unit method, the correlation method, the radiation method, the fusion method, the concomitant method, the dioptric method, and the penetralia method, are empty formalisms. On the other hand, the ideal status of the teacher as portrayed by the Commission, with its freedom of teaching, membership in an active national professional organization, participation in public

service, adequate income, and higher social respect, will, of course, meet with the unanimous approval of all those immediately concerned.

Most teaching is directed to the oncoming generation; it is therefore a form of present production for future use. In static periods, forecasts are not essential to the success of the process; in times of crisis and depression, such forecasts are difficult to make, certain to arouse controversy. In its fatidical rôle, the Commission on the Social Sciences is neither dogmatic nor pessimistic. Fundamentally, it is convinced that the day of acquisitive individualism is passing, to be succeeded by an era of ever wider measures of planning and control. While highly general, this conclusion is nevertheless calculated to annoy many still-surviving conservatives—see the current *Literary Digest* poll. Neither is it specific enough to satisfy many hopeful radicals. In addition, the Commission is against narrow intolerant nationalism, aggressive predatory imperialism, racial and religious prejudices; it is for American democracy and liberty, freedom of thought and inquiry, educational opportunity equal to all. These, of course, are high ideals; also they are so broad as to require much more detailed statement than the brief compass of the Report permits. Each of them is certain to be opposed by large and powerful groups. As a whole, they are consistent, except that thus far the success of planning and control under conditions of democracy and liberty remains to be proved.

For a future other than that conceived by the Commission—if, for example, we are doomed to dictatorship—the education it proposes would be a tragic preparation for the young. Rather, they should devote themselves to athletics and military training, be fed with propaganda, and taught to obey implicitly orders from above, with resulting complete atrophy of their intellects. In spite of doubts and opposition, however, the program of the Commission deserves strong general support. That it can be criticized effectively as to details, the reservations made by one of the members sufficiently show. Four members declined to sign the Report; it is to be regretted that they did not submit dissenting opinions.

Professor Merriam holds much the same view of the impending crisis as the Commission on the Social Sciences; however, he seems rather more inclined to believe in "a brilliant future lying within the grasp of mankind." He also adheres to democracy as "a way of life as well as a form of government." While both books are largely concerned with general goals, the teacher will find a much greater number of helpful detailed suggestions in the *Civic Education*. Professor Merriam has succeeded admirably in bringing his experience, not only in the lecture-room but even more largely in public office, to bear upon his subject. He presents the probable policies of the near future in rather greater detail and

flexibility. In reading the *Report of the Commission* one has the feeling that too much attention is concentrated upon the process of education alone; on the other hand, Professor Merriam notes to an almost bewildering degree competing agencies, notably the family, the church, the political party, and various social, occupational, and cultural groups, also such influences as literature, press, screen, symbolism, traditions, ideologies, and flaming personalities. In this part of the work he has used effectively the findings presented in the series of studies devoted to the making of citizens in several of the principal countries of the world.

In their wider implications as to the politics of the immediate future, these two books will be of interest to students of the social sciences generally. Of course they make a direct professional appeal to all teachers in this field. It would seem decidedly worth while to procure from the latter detailed comment regarding the practical application in the classroom of the many suggestions made in the two studies.

ROBERT C. BROOKS.

*Swarthmore College.*

*Planning the Modern State; An Introduction to the Problem of Political and Administrative Reorganization.* By F. A. BLAND. (Sydney: Angus and Robertson. 1934. Pp. xi, 230.)

This stimulating volume comes from the pen of one of the best-known students of public administration in the commonwealth of Australia, and is, in a way, a sequel to an earlier book, *Shadows and Realities of Government*, by the same author. The book comprises a course of lectures, delivered in Sydney, with the purpose of explaining the more recent trends of opinion upon the problems of government. It is significant to observe that these problems are almost completely of an administrative rather than a political nature.

In one chapter of the book, the author discusses certain problems of law-making in the twentieth century; and then he proceeds to deal with such issues as: Is the New Despotism Inevitable?, The Problem of Official Independence, Public Service Personnel, and The Government as Entrepreneur.

Although the book is written from the point of view of an Australian, and more broadly from an English point of view, the problems which Professor Bland raises and the analysis which he presents have a universal interest and application. In the light of American institutions, it is interesting to note that the author urges more local government, a position which is clearly understood in the light of the historical Australian development. One aspect of his plea for more local government is based upon a demand for a police force independent of the state or national

authority. Professor Bland says: "People as a whole, equally with the government, are interested in the preservation of law and order—and they will tend to gain more from an upright police force independently controlled than they will from one which acts only at the discretion and under the control of a minister of the Crown." Professor Bland fears lest the police come to be regarded as a corps of janissaries.

Presenting as it does fresh points of view on some universal problems, with particular emphasis upon Australian experience, this volume should be found on the shelves of every student of public administration.

LEONARD D. WHITE.

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#### BRIEFER NOTICES

##### AMERICAN GOVERNMENT—NATIONAL, STATE, AND LOCAL

*The American Year Book for 1933*, edited by Albert Bushnell Hart and William M. Schuyler (American Year Book Corporation, pp. xxv, 1018), is of especial value because of the comprehensive survey which it contains of the national recovery program and of the various changes which have taken place in the federal, state, and local governments since March, 1933. Professor Everett S. Brown, in an article on "The President and his Policies," has summarized the messages, addresses, and other public statements and acts of President Roosevelt during the year 1933. Dr. George S. C. Benson has contributed an analysis of the composition, procedure, and work of the Seventy-third Congress, including not only the measures that were considered, but also the relations between the President and Congress and the various investigations that were carried on. Professor Frederic A. Ogg discusses in greater detail the important laws enacted by Congress, including legislation on banking, currency and securities, emergency relief, agricultural legislation, the National Industrial Recovery Act, and railway coördination. The organization and activities of the new administrative units which have been brought into being by the recovery program of the Roosevelt administration are explained in detailed by Professor Lloyd M. Short. "The Supreme Court and Constitutional Law," by Professor Thomas Reed Powell, contains a brief summary of the important decisions of the country's highest tribunal, and also some interesting observations on the alignment of the various justices. Clinton Rogers Woodruff covers "The Federal Civil Service" and in doing so expresses the fear that the recovery program is threatened by the spoils system. There are also useful summaries of the personnel of Congress, and of the Administration, and a chronology of important political events throughout the year. Like its predecessors, the

latest number of the *Year Book* includes, in addition to the parts on American political history and national government, the usual sections on international relations affecting the United States, state government, municipal government, territories, public utilities, defense, and armaments. The volume is not merely a compilation of facts; it contains interpretations of the important developments of the year by competent authorities. Every student and teacher of government is indebted to the editors of the *Year Book* for this valuable work of reference and to the generosity of Mr. Adolph S. Ochs which has made its publication possible.—A. C. HANFORD.

*Labor Fact Book, II* (International Publishers, pp. 222), issued by the Labor Research Association, is the second edition of a reference book giving "information about a wide variety of economic, social, and political matters . . . prepared primarily for those who use such material in connection with activity in the working class movement." Expressed more bluntly, it is a campaign text-book for Communist and radical labor orators. Its value to students of the social sciences lies principally in this fact: they can get the Communist statement and interpretation of the developments of the depression period in an hour from this reference book, without having to listen to long soap-box orations or to wade through the voluminous literature and periodicals of the revolutionary labor movement. Plus this, the book has some value as a convenient repository of much important statistical information, although, unfortunately, the source of the information is seldom given. High points in the Communistic interpretation of the events of the depression period are indicated by the chapter and section headings and by key sentences. The depression is the "General Crisis of Capitalism;" the New Deal, the "Capitalist Program for the Crisis." "Strike-breaking is one of the chief aims of the NRA; under the cover of demagogery, Roosevelt and the capitalists are paving the way for Fascism." The American Federation of Labor is a "racketeering organization" which "fights industrial unionism" and has "helped to set up various strike-breaking boards under the NRA." The railroad brotherhoods have sacrificed the interests of the railroad workers on every vital issue confronting them in recent years." The Trade Union Unity League is "the acknowledged leader of the revolutionary trade union movement in the United States," and approval is also given the "unemployed councils" and the independent (dual) unions. Special chapters are devoted to Negroes and the farmers, whose situation is painted in such a light that they would appear to have nothing to lose and everything to gain by revolution. The "Workers Way out of Crisis" is that outlined in a resolution adopted at the last Communist convention: "The struggle of the workers for their pressing immediate demands grows into the social revolution for the overthrow of capitalism," followed by the confiscation

of "the banks, the factories, the railroads, the mines, and the farms of the big corporations" and the reorganization of "the present anarchistic system of production on Socialist lines." Appropriately, the last chapter deals with the Soviet Union, where this program has been put into operation and has resulted in "astounding progress" while the rest of the world has been suffering from depression. In these conclusions no other group would follow the Communists, but their attacks upon the New Deal and the American Federation of Labor are strikingly similar to those of the extreme conservatives. Can it be that the range of human thought does not lie in a straight line, but follows the manner of seating in European parliaments which brings the extreme right and the extreme left much closer together than they admit or realize? At all events, both extremes are directing their major attacks upon the center and using many of the same arguments.—EDWIN E. WITTE.

To quote the preface of Roland A. Eggers' *Retirement of Public Employees in Virginia* (D. Appleton-Century Co., pp. xvi, 269), the book "is essentially a manual, designed to assist local authorities in the formulation of provisions for the retirement of public employees which are adopted to local necessities and at the same time consonant with sound pension practice. Its basic objective is to assist in the accomplishment of a very practical task, and its contribution to the scholarly and academic aspects of pension theory and administration is therefore incidental." The author wisely devotes none of his 169 pages of main text to descriptions of existing pension systems in Virginia. He confines himself to the almost myriad legal decisions, principles, and facts which must be considered in developing a sound retirement system. His first two chapters, "The Pension as an Act of the Government" and "The Pension and the Public Servant," are concerned primarily with legal decisions. In preparing them, the author used "Professor Frederick Green's brilliant and scholarly analysis of the law of public pensions made for the Illinois pension law commission in 1918." In these two chapters, he brings the standard study of the cases on public pensions up to date. "Salaries and Living Costs in the Municipal Service," the third chapter, presents original statistical studies made by the University of Virginia Institute for Research in the Social Sciences, combined with the best available general data. The charts used are graphic and interesting. Chapter IV, "Pension Characteristics of Municipal Employees," ingeniously combines presentation of data regarding municipal employees in Virginia with good instruction on the elements of actuarial science requisite in developing a sound retirement system. Chapter V deals with the structure of the pension system, under the headings (a) membership, (b) benefits, (c) source of pension funds, and (d) administration of pension funds. Chapter VI, "The Administration of the Pension System," presents first a very brief summary of find-

ings and then a suggested ordinance for municipalities having over 400 employees. Chapter VII deals with the adaptation of the pension system to the small municipality. To cover so diverse a field in so brief a compass, the author has necessarily to be compact. A manual, however, is to be studied and is not intended for light summer reading. No one seriously concerned with public retirement systems can afford not to be familiar with this book; for although some of it is pointed to conditions in Virginia, most of it is of general application, and even the material specifically relating to Virginia is indicative of the type of data needed for other jurisdictions.—LEWIS MERIAM.

The governor of North Carolina is distinctive among state executives as lacking the veto power—a power uniformly enjoyed by other governors. This lack of power is, however, no criterion in evaluating another constitutional prerogative, namely, the pardoning power. In this field, the North Carolina constitution gives wide discretionary power to the governor. It is with the problems arising when this ancient gubernatorial power meets modern criminology that a recently published doctoral dissertation, *The Pardoning Power of the Governor of North Carolina* (Duke University Press, pp. 188), by Roma S. Cheek deals. The two opening chapters handle very well the general nature of the pardoning power and the legal and administrative aspects of pardons in the American states. The remaining chapters deal directly with the problem in North Carolina. The severity of punishment in that state—now less pronounced than formerly—has justified a wide use of the pardoning power; but the evidence arrayed in these chapters indicates that there is too much leniency and some lack of discrimination in the exercise of the power. When we find that fifty-three per cent of all those condemned to die are saved from execution by the governor, it is clear that the chief executive really makes the decision as to when capital punishment shall be inflicted. Too many pardons and commutations in proportion are given to prisoners sentenced to long terms as compared with those sentenced to short terms. The great need in North Carolina is for a parole system. None now exists for adults except through a conditioned pardon, although in connection with the juvenile reformatories the legislature has made provisions for such a system. Among the commendable features of this study are: (1) a clear exposition of the distinctions between pardon, reprieve, commutation, probation, and parole, and (2) a plea for a modern system of parole. Numerous errors in proof-reading and an occasional split infinitive are very minor defects. The volume can be recommended to students of politics and sociology as a critical and analytical study of the subject of executive clemency.—BEN A. ARNESON.

Perhaps the most important single conclusion which emerges from the rapidly accumulating body of evidence on the shameless spawning of un-

necessary local governments in Ohio, Michigan, and Illinois is that the cession of the western lands by Virginia in 1784 was a great mistake. Certain it is that the dire extremities in which local government finds itself in these areas today is largely a product of the abandonment of a simplicity in structure and area which was its geographical heritage from the Old Dominion. "Detroit the Dynamic", in *The Government of the Detroit Metropolitan Area* (Director of the Inquiry, 936 National Bank Bldg., Detroit, Mich, 121 pp.), by Dr. Lent D. Upson and Mr. J. M. Leonard, is the most recent addition to current exhibits on the Mess of the Modern Metropolis. This is no place to review the findings of the inquiry. In the aggregate, the investigators have discovered only that Detroit is much like every other metropolitan area. But no other regional survey of governmental agencies with which I am familiar cumulates with such deadly effectiveness the evidence against the toleration of the "metropolitan problem." The conclusions and suggestions are likewise not novel. City-county consolidation, city-county separation, metropolitan federalism, metropolitan statehood—all are familiar panaceas in the pill-boxes of metropolitan experts. But nowhere else have the probable effects, administrative and fiscal, of the several solutions to the metropolitan problem been set down so clearly and convincingly. The only false note in the entire study is in the conclusion. The writers suggest, as probably the most feasible plan, the creation of a strong county, in the hope that the already declining subordinate units will hasten their paresis by the voluntary transfer of functions to the geographically and fiscally adequate county. These are the words of a very, very tired reformer!—ROWLAND EGGER.

*The Municipal Year-Book, 1954* (International City Managers' Association, pp. viii, 256), edited by Clarence E. Ridley and Orin F. Nolting, is the initial issue of what is probably the first non-commercial publication of its kind in the United States. It begins (Part I) with six authoritative short articles on the general outlook for municipal government and the broader trends in the field. Following these come twenty even briefer contributions on the developments in 1933 in particular fields of municipal administration. A high standard of excellence is maintained in all. In Part II are numerous statistical tables dealing with forms of city government, boards and commissions, tenure and salaries of officers, assessed valuations, receipts, expenditures, debts, and delinquent taxes as of about 1933. Included also are directories of city officials, and selected lists of recent books, pamphlets, reports, and periodicals for the administrator and the student of administration. The editors completely disarm the critic by their own summary of the limitations of their publication. Their statistical tables and directories cover council-manager cities of all sizes, and non-manager cities of over 30,000, but not the non-manager cities

of smaller size. Thus more cities are left out than are included. Because of their positions in the Association, the editors naturally found it easier to get information from council-manager cities than from others. The idea of having a municipal year-book is an excellent one, but it is doubtful whether a repetition of the materials in this book, merely revised from year to year, will appeal generally to the public. The directories and some of the financial tables should undoubtedly be kept up to date, but they need also to be broadened in scope. In certain fields a single year's events will hardly reveal trends of sufficient significance to warrant an annual article. Although certain essential information should appear in each number, each annual issue might be distinguished by an especially full treatment of one subject. Thus one issue might be a police number, another a playgrounds and recreation number, a third a health number, and so on. Planned and executed on the basis of such a long-time program, the whole series could be made indispensable to all students and administrators.—WILLIAM ANDERSON.

In 1932, the School of Public and International Affairs at Princeton University made a survey of the government and finances of New Jersey. *Executive Control Over State Expenditures in New Jersey*, (Princeton University Press, 1934, pp. 36), by Denzel C. Cline, brings down to date this analysis of the state's financial procedure. Four sections deal with the background of administrative decentralization, noting the numerous surveys of the state government that have been made, each recommending extensive reorganization; the steps toward expenditure control adopted by the legislature in 1933; and critique and conclusions. The steps taken include provision for a budget commissioner, who has little control over special funds, and a commissioner of finance to supervise expenditures. Both are under the governor, and each is entirely independent of the other. The department of municipal accounts has had added to its duties the general audit of the accounts of all state departments, commissions, and institutions. This legislation makes possible some improvement in financial procedure, but in the words of the author, it "is merely a half-way reform." Detailed appropriation acts, no longer necessary or desirable, are still used, and the power of the governor over purchases is uncertain in extent, and probably in many cases inadequate. An astonishing number of dedicated or special funds is still maintained, and as compared with other states, the government exhibits an extreme degree of decentralization. Students of political parties cannot fail to be interested in the manner in which the two-party system, by a peculiar balance of urban and rural votes, has operated to prevent any important changes in this antiquated administrative organization.—W. BROOKE GRAVES.

One of the future benefits of the current economic depression may be an

escape from obsolete, unwieldy, and expensive governmental institutions and methods. The voice of economy is raised on every hand. Taxpayers' protective associations are of the soil racy in the Southwest. In their *The Government of Texas* (Arnold Foundation, pp. x, 149), fifteen collaborators, mainly teachers in Texas colleges and universities, present a survey of the proposed alterations in the governmental agencies and institutions of Texas. The title of the brochure is misleading in that a reader secures but a scant knowledge of the state's government as a whole. Rather, he discovers a great deal on the worst features of the system, so that the book might more accurately have been entitled "The Misgovernment of Texas, and a Program for Reform." The volume springs from discussions which took place at a conference held at the Southern Methodist University on March 2 and 3, 1934, and its principal value lies in the fact that politicians, seeking grist for the legislative mill and panaceas for their constituents, may adopt it as a handbook of reform. It is indeed timely, for it follows hard upon the reports of the Tax Survey Committee and the Joint Legislative Committees on Organization and Economy. Some of the chapters, indeed, sum up, and further recommend the adoption of, the findings of these committees.—CORTEZ A. M. EWING.

In his *Waiver of Jury Trial in Criminal Cases in Ohio* (Johns Hopkins University Press, pp. 85), Kenneth J. Martin has added another valuable research study to the list of publications of the Institute of Law on judicial administration. This study is divided into two main chapters: (1) "Attitude of Bench and Bar of Ohio toward Waiver," and (2) "The Use of Results of Waiver in Ohio and Maryland." To collect the material on attitudes, the writer sent a comprehensive questionnaire to judges and lawyers of Ohio, and received replies from 109 judges, 82 prosecutors, and 400 attorneys. The results are presented in graphic form and disclose a large majority (84.2 per cent) in favor of waiver. Other things indicated are: a slight increase in the number of convictions in non-jury trials, a saving of time in trials, reduction of the work of the prosecutor, and increased responsibility of the bench, which judges are in general willing to assume. Comparison of the results of waiver in Maryland (where the practice is old) and in Ohio (where it is recent) shows 85.7 per cent non-jury trials in the former and about 15 per cent in Ohio. Other interesting material is presented, and a further study is planned.—CLARENCE N. CALLENDER.

In *The Federal Municipal Debt Adjustment Act; When and How to Use It: A Guide for Municipalities* (Public Administration Service, pp. 12), Carl H. Chatters and John S. Rae present the text and a digest of this remarkable piece of legislation and explain its significance on lines intended to be serviceable especially to officials and creditors of municipalities in

financial difficulty. The keynote is that the act is not a cure-all for municipal debt troubles and should be brought into play only as a last resort and as a means of making an agreement binding on a recalcitrant minority after a plan has been worked out by the taxing body.

#### FOREIGN AND COMPARATIVE GOVERNMENT

A theory of political development founded upon careful research deserves consideration. Professor Albert Beebe White's *Self-Government at the King's Command* (University of Minnesota Press, pp. 130) presents the origins of self-rule in England as springing, not from the popular will, but from a severe discipline imposed by royal power. The unremunerated duties required of Englishmen in the first quarter of the thirteenth century is the theme of the work. Recognizing that Anglo-Saxon local institutions were the foundation of the scheme, the writer holds that Norman and Angevin royal training was still more potent in its development. Professor White's aim is to measure the total incidence of tasks imposed. With amazing patience he has ransacked the published sources, not only for the minifold forms of these, but even for numerical instances of their recurrence. Juries, inquests, and the minutiae of judicial procedure are in the foreground most of the time. Judicial uses of the people occupy considerably more space than non-judicial uses. No other century could provide so much material for the author's purpose. The massed effect is impressive. With subsequent lessening of these burdens his study is not concerned; but he justly holds that parish government of a later age perpetuated duties imposed and experience gained through royal command. His conclusion is that seventeenth-century Englishmen were capable of self-government because for generations kings had forced a share in government upon them.—WILLIAM A. MORRIS.

What Mr. A. Krishnaswami has to offer in the twelve chapters of *The New Indian Constitution* (Williams & Norgate Ltd., pp. 230) is a series of discussions on the proposed constitution of India, now being framed in London. He deals with such problems as the Indian states and the federation, federal finance, provincial legislatures, reservations and safeguards, and racial and religious minorities. He writes from the British Liberal viewpoint; bases his comments largely on the reports of the three Round Table conferences; and holds the thesis that the new constitution will be a sort of manna from heaven and will inaugurate an era of peace and prosperity—a view not endorsed by the general opinion of the Indian nation. To be sure, he grudgingly admits some of the constitution's glaring shortcomings, but he stresses unduly the "paramountey rights," "special responsibilities," "imperial interests," "consolidation," and "permanence of the British Empire," and in the end presents an unbalanced picture. It is curious that the British framers of the constitution are more worried

about the rights of the minority groups—Indian as well as alien—than about those of the majority. There is little evidence to prove that the author has considered the subject impartially. Among all the Indian leaders whom he quotes to substantiate his arguments are the few lone politicians, universally discredited in India outside the governing class. It does not appear that he has heard of the Indian National Congress, which represents the overwhelming mass of the Indian people. The fact is that the constitution is being drawn up with eyes mainly for the advantage of Britain, and the Congress has already gone on record as being unanimously opposed to it. Some of Mr. Krishnaswami's discussions are good; some are sketchy, superficial, and sophomoric.—SUDHINDRA BOSE.

In *The State of the Soviet Union* (International Publishers, pp. 96), Joseph Stalin reports on the work of the Central Committee to the Seventeenth Congress of the All-Union Communist party. In the document, he analyzes the economic crisis in the capitalist world and discusses the increasing dangers of the political situation and the foreign relations of the Soviet Union. The report also touches on the progress of industry and agriculture and the improvement of economic and cultural conditions in the country, and presents the problems of organization and leadership facing the Communist party. In discussing the foreign policy of the Union, Stalin comes out emphatically for world peace, but the general world nervousness is reflected in the statement that the U.S.S.R. "is prepared to answer blow for blow against the instigators of war . . . and those who try to attack our country will receive a stunning rebuff to teach them not to poke their pig's snout into our Soviet garden again" (p. 28). While, in general, the report glows with pride of achievement, it does not fail to record failure. Thus, speaking on the subject of agriculture, Stalin remarks: "In regard to Soviet farms, it must be said that they still fail to cope with their tasks properly" (p. 48). A significant note is struck when he rejects economic equality by saying that "equality in the sphere of requirements and personal life is a piece of reactionary petty-bourgeoisie stupidity worthy of a primitive sect of ascetics," and that "we cannot demand that all people shall live their individual lives in the same way" (pp. 71-72). The report closes with an appeal to all members of the party to work for the advancement of the Soviet Union.—B. W. MAXWELL.

"One-sixth of China is far from one-sixth of the globe. None the less, it is a vast territory. One-sixth of China is occupied by the "stable" (i.e., consolidated) Soviet districts of the Chinese Soviet Republic." With these words, Bela Kun opens the Introduction which he has contributed to *Fundamental Laws of the Chinese Soviet Republic* (International Publishers, pp. 87), following with a lively exposition of the importance and

growing achievements of this Soviet state in the heart of China as viewed by a Bolshevik whose name is by no means unknown to Europe. Almost all of the little volume is devoted, however, to English translations of salient documents, chiefly the Republic's constitution, land laws, military regulations, labor code, regulations of economic life, and nationality and marriage laws. A map shows the far-flung and by no means continuous areas regarded as forming parts of the Republic, and a series of diagrams depict the electoral system and the organization of the central, provincial, and town governments. Comparison of what is found here with the considerably more familiar features of government and economics in the U.S.S.R. can hardly fail to be instructive.

For fourteen years, the late George Burton Adams' *Constitutional History of England* has been the standard single-volume work on the subject. Revised by Robert L. Schuyler, of Columbia University, the book (Henry Holt and Co., pp. xv, 600) will henceforth have even greater usefulness. It is perhaps to be regretted that Professor Schuyler has chosen to introduce no changes in the first eighteen chapters, terminating with the Reform Bill of 1867; for much has been added to existing knowledge by such scholars as T. F. Tout since Professor Adams closed his pages. One can understand, however, his reluctance to "attempt the reconstruction of a master's work," and the new edition is abundantly justified by some reworking of two chapters in which Professor Adams bridged the gap from 1867 to 1920, and particularly by three entirely new chapters, dealing, respectively, with the Irish Free State, the post-war period, and the growth of administration. Inclusion of the last-mentioned chapter is especially significant and gratifying, for, as Professor Schuyler truly remarks, the growth of administrative activities is a feature of recent English constitutional history that has "become more conspicuous than it was when Professor Adams wrote."

#### INTERNATIONAL LAW AND RELATIONS

After a summer of successive European crises, the journalism of last spring is already stale. Were Hamilton Fish Armstrong's latest little book, *Europe Between Wars?* (Macmillan Co., pp. 115), only journalism, it would be of little value now or for the future. It was apparently published in June. Hard on its heels came the Nazi "purge" of June 30, Barthou's brilliant *démarche* in the projected Eastern Locarno, the ill-fated Austrian "putsch," the murder of Dollfuss, and the death of von Hindenburg—all events which render obsolete many of these pages. But fortunately the able editor of *Foreign Affairs* has foresight as well as hindsight and has here provided not merely journalistic superficialities, but a readable and accurate outline of the clash of forces in the pre-war

Europe of 1934. For the professional student of European politics and diplomacy there is little here that is new, though it is helpful to have available in the appendices the texts of the German-Polish declaration of January 26, the Balkan Pact of February 9, and the Rome protocols of March 17. The only glaring omission in the presentation is Russia and the Franco-Soviet *rapprochement* inspired by Hitlerism. The preaching against dictatorship in the last chapter is well done, though perhaps gratuitous in such a place. But these are minor defects. The interpretation, in general, is realistic, incisive, and illuminating. Sensationalism is scrupulously avoided. The question in the title remains a question, with an affirmative answer implied.—FREDERICK L. SCHUMAN.

In a reprint of the Stafford Little Lectures delivered at Princeton in April, 1934, and issued under the title of *Democracy and Nationalism in Europe* (Princeton University Press, pp. 88), ex-Secretary Henry L. Stimson strikes a note of hope and calls upon the people of the United States to assume that measure of responsibility which is ours "to give sympathy, encouragement, and help to the world in its vital struggle to protect our common civilization against war;" remembering, of course, that it is no more wise now than in the time of George Washington to entangle ourselves in the local politics of Europe. The lectures start with the reflection that the late war was fought to make the world safe for democracy. A glance at the Continent reveals the unhappy pervasiveness of Hitlers, Stalins, Pilsudskis, Mussolinis—not to mention lesser fry. In order not to be despondent, Mr. Stimson attempts to secure a long perspective. A great many accurate and well-known facts are compressed into small compass. Mr. Stimson writes well and has fashioned a neat survey of international relations in Europe. The real issue, he concludes, is not whether nationalism will destroy democracy, but whether nationalism and democracy can solve the great problems facing governments as a result of the industrial revolution, and whether nationalized democracies can expect success in their efforts to prevent war.—HERBERT W. BRIGGS.

The eighth series of *Problems of Peace* (Oxford University Press, pp. xvi, 291) follows closely in form and subject-matter the earlier series which have been noted here. The lecturers at the 1933 Geneva Institute of International Relations included English, Irish, German, Swiss, Belgian, and American experts, who dealt with many topics, both general and specific. Problems of nationalism, public opinion, and foreign policies of particular states in their effect upon international relations were dealt with by such men as Gilbert Murray, C. Delisle Burns, E. J. Phelan, William E. Rappard, and A. H. Feller. Special problems, such as those involved in the World Monetary and Economic Conference, public works and the world crisis, and the gold standard in international relations, were

considered by such authorities as W. Arnold-Foster, Henri Rolin, Sean Lester, Sir John Hope Simpson, Manley O. Hudson, Moritz J. Bonn, Frank D. Graham, Clarence K. Streit, and P. W. Martin. For a close-up of current international problems, this volume is of real value; especially is it of interest as the crystallization of the views of men intimately associated with experiments in their solution.—PHILLIPS BRADLEY.

## POLITICAL THEORY AND MISCELLANEOUS

*Geography in Relation to the Social Sciences* (Charles Scribner's Sons, pp. xxii, 382), by Dr. Isaiah Bowman, is one of a series of reports to the Commission on Social Studies dealing with social studies in the schools. It is not a systematic treatise on human geography. Nevertheless, its author, who is director of the American Geographical Society, presents a "philosophy of geography" and a theory regarding its utility in relation to social studies. This is controversial ground. Dr. Bowman skillfully steers a middle course between theories of human omnipotence over nature and of geographical determinism. Men must live with their physical environment. Within technological and economic limits, they may alter this environment. But, in the main, human progress has been a record of successful adjustments to, rather than alterations of, physical surroundings. The special province of the geographer is to classify environmental facts and to analyze adjustments which men have made to them. In successive chapters, the author presents the technical conceptions of geographical science, methods of measuring geographic facts, and techniques for analyzing human adjustments thereto. He emphasizes especially the regional approach. Particular men live in particular places, and contend with particular combinations of distance, topography, minerals, water, climate, soil, and vegetation. Students of politics will find much that is significant for them. There is a chapter on "economic and political bearings," but comments on the relations of politics and geography are scattered throughout the work. The need for social planning, and for political action in connection therewith, is tacitly admitted. But the futility of planning without a broad foundation of precise geographic knowledge is implicit on every page. The volume also contains a survey of "Geography in the Schools of Europe" by Rose B. Clark, of Nebraska Wesleyan University. This survey, which concludes with a chapter entitled "What We Can Learn from Europe," should prove useful to all having curricular responsibilities in public schools and universities.—HAROLD H. SPROUT.

The texts of the addresses and discussions at the Sixth International Studies Conference held in London May 29 to June 2, 1933, have been compiled in a second volume on *The State and Economic Life* (International Institute of Intellectual Coöperation and World Peace Foundation, pp. 422). This volume bears the same title as one published in 1933 con-

taining a report of the Fifth Conference, held in 1932. The papers included fall into two broad categories: International Trade and Finance (Most-Favored Nation Clause, Open Door Policy, Imperial Preference, and International Capital Movements), and State Intervention in Private Economic Enterprise (Philosophical and Practical Aspects of State Intervention, National Planning, and International Implications of State Intervention). Appended are a series of memoranda prepared by eleven national groups on a series of international economic problems. The memoranda of the American group consist of abstracts of Bidwell's and Angell's reports, *Tariff Policy of the United States* and *Financial Foreign Policy of the United States*, respectively, reviewed in this journal, Vol. 27, p. 847, and Vol. 28, p. 212.—WALTER H. C. LAVES.

In his very interesting and scholarly little book, *What Economic Nationalism Means to the South* (Foreign Policy Association and World Peace Foundation, pp. 28), Peter Molyneaux depicts the sad plight of the Southern farmer, which he attributes to our policy of economic nationalism. Mr. Molyneaux points out that during the new era of prosperity the gross farm income for the South per capita of farm population was \$242, while that in the other thirty-eight states was \$493. High tariffs mean the economic ruin of the cotton states; the remedy, he suggests, lies in more international coöperation and a lowering of tariffs. While the writer agrees on the whole with Mr. Molyneaux's thesis, it is well to point out that there has been considerable sentiment in favor of the tariff during recent years in the South. This, Mr. Molyneaux seems unfortunately to have lost sight of. While the Hawley-Smoot tariff was being debated in Congress in 1930, Senator George of Georgia insisted that the trouble with the farmer was that he had to sell in an unprotected market and buy in a protected one. At the same time, the late Senator William J. Harris of Georgia demanded a high tariff on jute and other products which compete with low-priced cotton, and other Southern congressmen insisted on a tariff on cocoanut oil and peanuts. All of which only goes to show that the South does not present a united front against the tariff.—CULLEN B. GOSNELL.

Mr. Paul D. Hevesy, Hungarian minister to Spain and delegate to the League of Nations presents his solution of the agricultural crisis in *Le Problème Mondial du Blé* (Librairie Félix Alcan, pp. 294). In the judgment of the author, "the basis of the world crisis is the agricultural crisis. The basis of the agricultural crisis is the wheat crisis." As a means of vanquishing the agricultural depression, it is proposed to establish "L'Entente Internationale du Blé." The suggested agreement embodies an international wheat council, composed of one representative from each member state. An International Wheat Office would be the executive arm

of the council, and national wheat offices would represent the international office in the various member countries. This machinery would be used to maintain a world price fixed by the council, and international trade in wheat would be regulated rigidly by quotas. Increased production would be discouraged by the payment of the world price to grower "conformists" and a lesser price to "non-conformists." The plan involves a voluntary allotment to growers. In that respect, it magnifies to world proportions our own wheat adjustment program. One is inclined to believe the difficulties involved would be multiplied in proportion.—ASHER HOBSON.

Johannes Hasebroek's *Trade and Politics in Ancient Greece* (G. Bell and Sons, pp. 187), now translated from the original 1928 German edition, should be as valuable to political scientists as to economic historians. Building partly on the work of Max Weber, Oertel, and others, the author attacks the fallacy of interpreting classical Greek politics in terms of commercial interests. He pictures Hellenic Greece as predominantly agrarian, with an agrarian, consumer ideology. Trade and industry, still small-scale and largely in the hands of metics, were seen only as a source of taxation and of necessary provisions for the citizen-body. The state was not the instrument of capitalist motives, but of the citizens' ideal of a life without labor through maintenance by the state. Thus Greek democracy stemmed from a peasantry, demanding its share of land and the wealth of the state; Greek imperialism looked not toward markets, but toward tribute and the control of supplies. The study is elaborately documented, and the translation, by L. M. Fraser and D. C. Macgregor, is excellently done.—JOHN D. LEWIS.

Striving to "maintain unblunted the revolutionary edge" of the life, work, and teaching of his hero, R. Palme Dutt, in his *Life and Teachings of V. I. Lenin* (International Publishers, pp. 95), seeks to "present the significance and rôle of Lenin, not primarily as a Russian leader, but as a world leader at a critical turning-point of human history; and not primarily as a unique personality . . . but as the leader and responsible representative of a world movement of direct influence and significance for us today." Fifty pages are devoted to biography, something less than that number to "teachings;" and one will hardly find a more concise but meaty elucidation of the subject, from, of course, a purely Communist view-point. The conclusion arrived at—though it is stated in the opening chapter—is that "Lenin's strength . . . was that he alone, from an early point, on the strong basis of Marxism, from well before the end of the nineteenth century, saw with complete clearness the whole character of the future period, prepared for it, drew the practical, concrete con-

elusions, and was alone adequate to the demands of history when the time came."

In *Pragmatism and the Crisis of Democracy*, University of Chicago Public Policy Pamphlet No. 12 (University of Chicago Press, pp. 25), Charles W. Morris presents an enthusiastic defense of pragmatism as a fourth alternative to (a) the defeatist tendency to turn from present distress to a rosy past, (b) "the philosophy of blood" (Fascism), and (c) "the philosophy of brawn" (Communism). Pragmatism, "the philosophy of the heart," is the "major philosophic expression" of democracy; and, since Mr. Morris finds pragmatism so thoroughly in tune with the *Zeitgeist*, he still has strong hope of redemption through democracy. Of the pressing problems of democracy, he has practically nothing to say; but he believes that "if it can marshall its forces and clarify its vision, perhaps democracy and the philosophy of the heart can provide a living alternative. . . ."—JOHN D. LEWIS.

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## LABOR, THE COURTS, AND SECTION 7(A)

ALPHEUS T. MASON

*Princeton University*

Any economic system, whether systematic or not, involves a particular set of relationships between men and things and between men and men, and so needs the support of a corresponding legal and political system. One naturally expects political and legal change to follow social and economic revolutions. Perhaps that is the New Deal—a political and legal revolution to meet the demands of a new economic era. But whatever the situation may require to the mind of the Executive and Congress, there remains the question whether any particular legislative project is allowable under the Constitution. For our government, this matter of bringing law into conformity with economics meets with peculiar difficulties. It is not enough to secure rights by legislative enactment. Such guarantees must run the gauntlet first of administrative interpretation and ultimately of the courts. If one may judge from newspaper headlines, there is no surer way to bring our rights into controversy than to embody them in a statute.

It is then a bit surprising that organized labor should always have placed such emphasis on legislative enactment as a main basis of rights. Since 1895, when "government by injunction" became a household phrase, hardly a session of Congress has passed without some bill to improve labor's legal status. With the Court's application of the Sherman Act to unionist activities in the Danbury Hatters' Case of 1908, another item was put on labor's list of grievances to be remedied by legislation. These objectives are sought, not by means of a labor party, but by "rewarding friends and punishing enemies" as between the two old parties.<sup>1</sup> Lobbies

<sup>1</sup> The traditional non-partisan political policy was reaffirmed at the 54th annual convention at San Francisco this year. Resolutions calling for an independent labor

are maintained in Washington and elsewhere which for persistence and vigor compare favorably with the loudest barkers of capitalism.

Labor has long been interested in annulling what it regards as prejudiced and erroneous judicial interpretations. The labor injunction was a perverse and vicious construction of equity power; the Court's application of the Sherman Act to labor a flagrant betrayal of Congressional intent, and so on. A most imposing list of legislative measures to remedy alleged shortcomings in New Deal legislation and administration has already been drawn up or sponsored by the A. F. of L.<sup>2</sup> Their economic and social objective is mainly the attainment of higher wages, shorter hours, and better working conditions. The broader purpose, to secure an equal share in the government of industry, had, until N.R.A., formed little or no part of labor's program.

The first important statute to improve labor's legal status was the Clayton Act of 1914. This measure was to prevent the application of anti-trust laws to labor activities and to restrict injunctions in labor disputes. But judicial interpretation soon showed that neither goal had been achieved; the Court again, so it appeared, had defeated legislative intent by judicial review. Despite these reverses, labor never lost faith in getting statutes to secure rights. Whether that faith can now be justified depends on what happens to the National Industrial Recovery Act.

A "new deal" for both industry and labor, this act made important concessions to employers and manufacturers by conceding them benefits advocated by the National Chamber of Commerce, namely, a relaxation of the anti-trust laws enabling trade associations to regulate prices, production, and trade practice. At the same time, conscientious employers were protected from cut-throat competition and sweat-shop rivalry by minimum wage and maximum hour requirements. For the first time, these social welfare provisions were made national in scope, and gains long sought by the workers were thus achieved.

But labor's great hope lay in the provisions for collective bargaining. Three clauses of Section 7(a) are in point: (1) every code must acknowledge the right of employees to organize and bargain

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party were offered and their proponents claim that had they been submitted and considered on their merits, rather than smothered by parliamentary tactics, they would have received around 7,000 votes.

<sup>2</sup> *Report of the Executive Council of the American Federation of Labor*, October 1, 1934, p. 47 ff.

collectively through representatives of their own choosing; (2) employees shall not be subjected to interference, restraint, or coercion by employers when they attempt to organize and select representatives; (3) employees shall not be compelled as a condition of obtaining employment to join a company union or to refrain from joining or forming an organization of their own choosing.

It should be said at the outset that the importance of these provisions is not in giving trade unions a new legal status. The legality both of unions and of collective action has not been questioned since *Commonwealth v. Hunt* in 1842. It had long been recognized that employees are entitled to organize for redress of grievances and to promote agreements with employers as to rates of pay and conditions of work. Speaking for the Court in 1921, Chief Justice Taft discussed the economic situation out of which trade unionism had developed:

Trade unions were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave that employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court.<sup>3</sup>

Long before the enactment of Section 7(a), employees had the right to organize and bargain collectively *if they could*, and when they did so the law supported them. Nor is there any doubt that the Administration has given, and does give, governmental backing to this right in those industries in which organized labor has established itself.

From the outset, however, the Administration has been embarrassed by the fact that many workers, especially in the mass-production industries of the country, are not members of the A. F. of L. There are divisions and disputes among labor organizations themselves as to who may speak as the bona fide representative of

<sup>3</sup> *American Steel Foundries v. Tri-City Council*, 257 U.S. 184, 289. This statement is especially significant in view of the fact that no one did so much to establish and reinforce "government by injunction" as Mr. Taft. See my article, "The Labor Decisions of Chief Justice Taft," 78 *University of Pennsylvania Law Review*, March, 1930.

labor. N.R.A. found trade unionism at the lowest ebb since 1916. Tremendous opportunities thus came to labor when it was least able, from the viewpoint of economic power, to take full advantage thereof. Membership in the A. F. of L. declined steadily from over four million in 1920 to less than two million in January, 1933. The four years of depression had weakened the organization greatly. In all big industries, such as automobile and steel, either the open-shop prevailed or company unions and employee representation held the field.

A survey by the National Industrial Conference Board, dated November, 1933,<sup>4</sup> sought to determine the relative emphasis on individual bargaining, collective bargaining through company unions, and bargaining through trade unions. The companies replying employed 2,585,740 wage earners; 1,180,580, or 45.7 per cent, bargained individually; 1,164,294, or 45 per cent, bargained through company unions, and 240,866, or 9.3 per cent, bargained through labor unions. By May, 1934, workers bargaining individually were 40 per cent; through employee representation plans, 49.6 per cent; through labor unions, 10.4 per cent.<sup>5</sup> Government had declared the right of collective bargaining, but had not defined the terms nor indicated the organization or process to be used. In a few months, 7(a) gave rise to any number of interpretations.

Collective bargaining prior to 1933 usually meant dealing through recognized trade union representatives.<sup>6</sup> Whatever the framers of 7(a) intended, there is reason to believe that during the early days of the Recovery Act, both Administration officials and employers understood the term in this sense. This attitude was short-lived. It soon became clear that supporters of employee representation and of company unions were set to combat the presumption that "collective bargaining" required dealing with outside union representatives. The bolder employers not only maintained that employee representation conformed to the requirement of 7(a), but also insisted that it was collective bargain-

<sup>4</sup> *Individual and Collective Bargaining under the N.I.R.A., November, 1933.* National Industrial Conference Board, Inc.

<sup>5</sup> *Individual and Collective Bargaining in May, 1934*, National Industrial Conference Board, Inc.

<sup>6</sup> This view is expressed in an article, "Effects of the Recovery Act upon Labor Organization," by Professor D. A. McCabe, which appears in the *Quarterly Journal of Economics* for November, 1934.

ing of a very superior character indeed. This view is disputed by A. F. of L. leaders, who regard the company union as an instrument of coercion and interference—as the chief barrier against any real collective bargaining. Actual experience is not always cited in evidence.

President Green expressed organized labor's attitude at Akron on September 4 of last year. "The great labor organization which I have the honor to represent serves as a medium through which workers of the nation may give expression to their hopes and ideals."<sup>7</sup> The Federation not only regards itself as the one proper agency, but insists that this is the meaning of the law. The employer holds that he cannot recognize the union as an exclusive bargaining medium because it numbers only a minority of his workers. For light on these points, one looks in vain to the act itself.

Nor has the Administration clarified the issues involved. On August 23, 1933, Messrs. Johnson and Richberg sought to set forth the "plain meaning" of the section and declared that "employees can choose any one they desire to represent them, or they can choose to represent themselves. Employers likewise can make collective bargains with organized employees, or individual agreements with those who choose to act individually."<sup>8</sup>

A somewhat different interpretation was given by the President on October 30, in his settlement of the "captive" coal mine dispute, when he said that "representatives chosen by a majority will be given an immediate conference and separate conferences will be held with any representatives of a substantial minority."<sup>9</sup> A seemingly unequivocal and widely noticed construction was given by the President on February 1, in an executive order generally understood to mean that when an election is held to choose representatives for collective bargaining, those selected by a majority of the employees will represent all. But three days later, Johnson and Richberg issued a statement designed to correct what they characterized as "an erroneous press interpretation," the main burden of the explanation being that the "selection of majority representatives does not restrict or qualify in any way the right of minority

<sup>7</sup> *N.Y. Times*, September 5, 1933.

<sup>8</sup> *Ibid.*, August 24, 1933.

<sup>9</sup> *Ibid.*, October 31, 1933.

groups of employees or of individual employees to deal with their employer."<sup>10</sup>

In less than a month, the National Labor Board ignored the Johnson-Richberg opinion and ruled in the Denver Tramway Corporation Case<sup>11</sup> that the union supported by the majority should set conditions for all the workers, and that the management must recognize representatives of the majority (constituting in this case only 52 per cent of the total) as the exclusive agency of the employees for collective bargaining. That the Board's ruling was not applicable in all cases, however, was shown on March 25, when the President disregarded it, as well as his own executive order of February 1, in his settlement of the threatened automobile strike. The arbitration agreement there was based on the proportional representation principle, and provided that "if there be more than one group, each bargaining committee shall have total membership *pro rata* to the number of men each member represents."<sup>12</sup> This seemed to dispose of the majority rule idea; but only temporarily, for the National Labor Board continued to follow it, upholding the claims of representatives of the majority even where the vote was for the works council.

The most recent decision is that of September 1 last, in the Houde Engineering Corporation Case, where the National Labor Relations Board, successor to the now defunct National Labor Board, held that "the only interpretation of Section 7(a) which can give effect to its purposes is that the representatives of the majority should constitute the exclusive agency for collective bargaining with the employer."<sup>13</sup> So we are back where we began. That is to say, the National Labor Relations Board's ruling reverses the interpretations of the President, the Recovery Administrator, and the General Counsel of N.R.A., and returns to the Labor Board's consistent attitude, namely, that the representatives chosen by a majority of employees shall be the "exclusive bargaining agency of all employees." The only qualification is that individual employees and minority groups retain the right to present grievances. The practical effect of this decision, so far as can be

<sup>10</sup> N.R.A., Release No. 3125, February 4, 1934.

<sup>11</sup> *In re* Denver Tramway Corp. (N.L.B. case no. 149). Release no. 3589, March 3, 1934.

<sup>12</sup> Administrative Order, No. X-11, March 26, 1934.

<sup>13</sup> *In re* Houde Engineering Corp. (N.L.R.B., Release 141, September 1, 1934.)

seen, is that any union with 51 per cent or more of the workers can establish conditions of work for the other 49 per cent or less. Though generally supposed favorable to labor and violently opposed by the National Manufacturers' Association,<sup>14</sup> this ruling, as a matter of fact, affords no support to organized labor whenever and wherever the A. F. of L. union is in the minority.

Here the matter stands, in greater confusion than at any time since the act was passed. The Administration has had no firm or definite labor policy. It has vacillated and disagreed with itself so as alternately to give support to the employer and then to organized labor. As far as concerns the relative effects of administrative decision and indecision on the interests involved, labor has undoubtedly been the greater sufferer. And it is "in regard to Section 7(a) that the most cruel disillusion of the workers regarding N.R.A. has occurred."<sup>15</sup> Administrative uncertainty plus the inability of union representatives to establish their claim to the right to act as the sole agent of labor has definitely checked the A. F. of L.'s organizing movement, while employee representation plans have been growing steadily. Such uncertainty has both accentuated and embittered industrial controversies. It is high time this vital matter was put on a sounder footing.

For the President, General Johnson, and Donald Richberg, collective bargaining means representative bargaining. This view has the support of the National Manufacturers' Association and employers generally, but is strongly opposed by A. F. of L. officials, who maintain that the right to choose representatives for collective bargaining involves vesting in the representatives chosen by the majority the right to represent all. This contention is entirely in accord with the older connotations of collective bargaining, the

<sup>14</sup> On September 11, the Association issued a statement recommending that employers disregard the Board's ruling and continue "to abide by the long-standing and authoritative interpretations upholding the right of minority groups to deal with their employers . . . until competent judicial authority has declared otherwise."

<sup>15</sup> *Report of the Executive Council of the American Federation of Labor*, October 1, 1934, p. 75. "Workers who joined unions," the Report continues, "in good faith . . . found themselves dismissed for no other reason than that they had accepted, at face value, the promises contained in the law; company unions were created by employers to prevent the growth of real unions, and to forestall real collective bargaining. Agencies set up by the N.R.A. for the enforcement of Section 7(a) were either unwilling or unable to enforce the law, or delayed so long in its enforcement that unions concerned were weakened and even destroyed, and faith in this portion of the Act lost."

distinguishing feature of which has never been its representative character, but rather the substitution of collective action for competition, whether between workers or groups of workers. Indeed, the majority rule seems never to have been disputed either by employers or employees until collective bargaining was embalmed in legislative enactment. "It was never questioned," the National Labor Relations Board declared in the Houde Engineering Case, "until employees who had been shepherded into company unions began, under the protection of Section 7(a), to join outside labor unions and to demand the right to bargain collectively through these unions."<sup>16</sup> No scheme is better calculated in the mind of A. F. of L. officials, to render collective bargaining futile than that which accords genuine trade unions and sham company unions an equal voice in bargaining with the employer. This issue must be finally settled in the courts. One can only venture an opinion as to the outcome.

In the algebra of the Recovery Act, the right of workers to organize and bargain collectively through representatives of their own choosing equals the right of the employer to conduct his own business as he pleases. Neither right is absolute. The contrary opinion is the cardinal error of both employer and employee; both have claimed more under the Act than its language justifies. Too frequently, labor takes the position that it can count on governmental support in any organized activity whatever. It might be well to recall that not even the right to strike is absolute. Labor's best friend on the Court, Mr. Justice Brandeis, ruled not long ago that "a strike may be illegal because of its purpose, however orderly the manner in which it is conducted."<sup>17</sup> Employers still insist upon an absolute right to conduct their own business as they see fit, though such right has long since suffered many restrictions, and that too with Supreme Court approval. Many of these rulings have had to do with protective labor legislation which has usually been sustained. Several protective labor clauses found their way into the New Deal legislation. The most questionable of these from a constitutional point of view is that relating to the minimum wage and those provisions in 7(b) which authorize employers and employees by mutual agreement, and with the approval of the

<sup>16</sup> *In re Houde Engineering Corp.* (N.L.R.B., Release 141, September 1, 1934).

<sup>17</sup> *Dorchy v. Kansas*, 272 U.S. 306 at 311 (1926).

President, to set standards as to wages and other conditions of employment. Price fixing by the legislature has seldom enjoyed judicial endorsement; price regulation by employer and employee, even with Executive approval, is far more questionable.

A minimum wage statute for women in the District of Columbia was set aside in a five-to-four decision as recently at 1923.<sup>18</sup> Speaking for the Court, Mr. Justice Sutherland very carefully distinguished this type of regulation of the employer-employee relationship from those of hours of labor and other statutes which the Court had sustained. The wage feature of the contract constitutes the very heart of it, and therefore any regulation affecting wages must be attended by extraordinary circumstances. Unfortunately for the Act, Mr. Justice Sutherland could not find any circumstances sufficiently extraordinary. Concluding that a woman's morals depend upon considerations other than wages, the learned judge thought that if a woman requires a minimum wage to protect her morals, a man may need a minimum wage to protect his honesty. The framers of 7(a) may have taken Justice Sutherland's suggestions to heart, for the act subjects employers of men as well as of women to minimum wage requirement.

Only one New Deal case throws any light on what position the Court may take as to wage-fixing. This is the famous milk case of *Nebbia v. New York*.<sup>19</sup> Upholding a New York price-fixing statute, Mr. Justice Roberts, speaking for four colleagues, made two departures of great significance to New Deal legislation in general and minimum wage legislation in particular. The concept "business affected with a public interest," which has haunted the Supreme Court in cases involving the due process clauses of the Fifth and Fourteenth Amendments, is now abandoned as a satisfactory test of the constitutionality of measures regulating business practices and prices. Mr. Justice Roberts informed New York (and the other states) that "it is free to adopt whatever economic policy may reasonably be deemed to promote the public welfare. The courts," he added, "are without authority to declare such policy, or, when it is declared by the legislature, to override it."<sup>20</sup> The

<sup>18</sup> *Adkins v. Children's Hospital*, 261 U.S. 525.

<sup>19</sup> 291 U.S. 502 (1934).

<sup>20</sup> *Ibid.* at 537. On November 5, the views herein expressed gained additional support when a unanimous bench upheld the price-fixing provisions in the New York State milk control act in a test case brought by the Hegeman Farms Corpora-

Roberts opinion also overthrows "the idea that there is something regularly sacrosanct about the price one may charge for what he makes or sells," and that the police power does not extend to price regulations. In no other quarter had this idea persisted quite so obstinately as in the Supreme Court itself. This changed attitude toward the sacrosanctity of "the heart of the contract" augurs well for minimum wage regulations.

One other provision of 7(a) has had a long judicial history—that which makes it illegal for an employer to require an employee not to join a union as a condition of employment. The first legislative effort to outlaw the anti-union, or "yellow dog," contract was in 1898, when Congress declared it a criminal offense for interstate commerce carriers to make such an arrangement with their employees. This statute was declared unconstitutional under the Fifth Amendment as an arbitrary interference with liberty of contract.<sup>21</sup> A similar state statute was disallowed in 1915 under the due process clause of the Fourteenth Amendment.<sup>22</sup> In 1917, the Supreme Court sustained an injunction to protect a "yellow dog" contract against the organizing activities of a labor union.<sup>23</sup> Despite the legal support which the Court has given this noxious form of labor agreement, several statutes recently passed declare it contrary to public policy. Although an employer making such a contract is not criminally indictable, he is denied access to a court either of law or of equity in his effort to secure its enforcement. The first such statute was that of Wisconsin in 1929. By the end of 1933, similar legislation had been passed in a dozen other states.<sup>24</sup> In like manner, the Norris-LaGuardia Act of 1932 declares the "yellow-dog" contract contrary to public policy and prohibits federal courts of equity from taking jurisdiction in suits brought to secure its protection. Section 7(a) goes further, and makes the "yellow dog" contract illegal, and any employer who insists upon any such agreement is guilty of coercion and is indicta-

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tion. Justice Sutherland concurred in the decision, only implying that there were certain details of the opinion which he did not approve. See *N. Y. Times*, Nov. 6, 1934.

<sup>21</sup> *Adair v. United States*, 208 U.S. 161 (1908).

<sup>22</sup> *Coppage v. Kansas*, 236 U.S. 1 (1915).

<sup>23</sup> *Hitchman Coal and Coke Co. v. Mitchell*, 245 U.S. 229 (1917).

<sup>24</sup> Arizona, California, Colorado, Idaho, Illinois, Indiana, Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania, and Utah.

ble under the Recovery Act. This legislation indicates a drift of public opinion which may yet be noted in the Grecian temple of our Supreme Court.

The clause relating to the "yellow-dog" contract may be regarded as part and parcel of the more general provision which guarantees employees freedom from "interference, restraint, and coercion" by employers in the exercise of their right of self-organization. From the point of view of labor, it is these provisions that mark a distinct advance in the statement of the substantive law of labor, and it is these, in my opinion, which will find support in the courts. Whatever uncertainty there may be in other provisions of the Act, there can be no doubt that the statute does make clear the fact that it is the exclusive concern of the workers whether they shall organize at all, what form their organization shall take, and the manner in which their representatives shall be chosen. "The government makes it clear," declares the Principles of Settlement of the Automobile Strike, "that it favors no particular union or particular form of employee organization or representation. The government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source."<sup>25</sup> The law has long upheld the right of laborers to organize and bargain collectively, but workers have not heretofore been protected in their right to do so against the discriminatory conduct of their employers.

The Roosevelt Administration regards collective bargaining as an instrument of recovery, as well as the logical means of conducting negotiations between employees and management; and it is declared to be the national labor policy. That the legislature has authority to make such a declaration and to insist on such conditions as will make it effective, there cannot be any doubt. Prior to 1930, a number of Supreme Court judges expressed this view, but always in dissent. Three dissenters in the Coppage Case, among them Associate Justice Hughes, took this position. Arguing in support of legislative authority to declare the policy of the state as to matters which have a reasonable relation to the welfare, peace, and security of the community, Justice Day said in dissent:

In view of the relative positions of employer and employed, who is to deny that the stipulation [making non-union membership a condition of employment] here insisted upon and forbidden by law is essentially

<sup>25</sup> Administrative Order No. X-11, March 26, 1934.

coercive? . . . Opinions may differ as to the remedy, but we cannot understand upon what ground it can be said that a subject so intimately related to the welfare of society is removed from the legislative power. . . . It would be difficult to select any subject more intimately related to good order and security of the community than that under consideration—whether one takes the view that labor organizations are advantageous or the reverse.<sup>26</sup>

Chief Justice Hughes reaffirmed this view fifteen years later. This time he spoke for a unanimous Court and sustained an injunction under the terms of the Railway Labor Act of 1926 to protect the rights of labor against a company union organized by the railroad company in contravention of the act. He said:

Congress was not required to ignore this right [to organize and bargain collectively], but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.<sup>27</sup>

Nor is there much difficulty in determining what constitutes "coercion" and "interference" in cases where there is a well established union. Johnson and Richberg, in their statement of August 23, pointed out that "the conduct of employers which is here prohibited" was defined by Chief Justice Hughes in the Railway Clerks' Case.<sup>28</sup> In interpreting the provisions of the Railway Labor Act of 1926 which served as a model for 7(a), the Chief Justice observed:

The intent of Congress is clear with respect to the sort of conduct that is prohibited. "Interference" with freedom of action and "coercion" refer to well understood concepts of the law. The meaning of the word "influence" in this clause may be gathered from the context. . . . The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization." The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives

<sup>26</sup> *Coppage v. Kansas*, 236 U.S. 1, at 39–40 (1915).

<sup>27</sup> *Texas and New Orleans Ry. Co. v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 348, at 570–571 (1930).

<sup>28</sup> *N.Y. Times*, August 24, 1933.

for the purposes of this act than in relation to well-known applications of the law with respect to fraud, duress, and undue influence.<sup>29</sup>

Although the phrasing in the Railway Labor Act differs slightly from that in the National Industrial Recovery Act,<sup>30</sup> both are directed against any activity on the part of the employer which would "corrupt or override the will" of the workers. And I should say that the employer may not ordinarily interest himself at all in the organization and selection of representatives of the employees without danger of corrupting or overriding the will of the employees. This point was stated not long ago by Judge Walter P. Stacy, chairman of the Steel Labor Relations Board. Replying to the petitioners' request to determine who should represent the employees in collective bargaining, Judge Stacy observed: "You [the employers] are not supposed to be interested in that. It is a controversy in which you have a moral interest, but you have no legal interest in it."<sup>31</sup>

It is important to note that the Railway Clerks decision is of limited application, and is conclusive only in a situation where the organized power of labor is undisputed, and where there is no question as to who are the legitimate representatives for purposes of collective bargaining. This case leaves unsettled the point of greatest difficulty, namely, who constitutes the bona fide representative or representatives where there are divisions among the workers. The National Labor Board usually defended its decisions favoring the right of a majority to act as the exclusive bargaining agency on the ground of expediency—the inconvenience of dealing with many groups. Its successor, the National Labor Relations Board, finds somewhat different grounds of decision. After citing various precedents for general acceptance of the majority principle, the new Board states its position in the Houde Engineering Case as follows:

This Board, therefore, stands on the majority rule, and it does so more willingly because the rule is in accord with American traditions of

<sup>29</sup> 281 U.S. 548 at 568.

<sup>30</sup> The former prohibits "interference, influence, or coercion" in the designation of representatives, whereas the latter forbids "interference, restraint, or coercion."

<sup>31</sup> Editorial in *New Republic*, September 4, 1934. See also *In re Edward G. Budd Mfg. Co.* (N.L.B.), Release No. 2283, December 15, 1933; *In re S. Dressner & Son*, Chicago (N.L.B. case 66), Release 3041, January 31, 1934; and *In re Cochran Shoe Co.* (N.L.B. case no. 170), Release 3315, February 16, 1934.

political democracy, which empower representatives elected by the majority of the voters to speak for all the people.<sup>32</sup>

Even if we concede the authority of the Board to interpret the statute (which is at least doubtful), such an argument is not likely to prevail under a system of constitutional limitations where the claims of the minority may be held effective even over the will of the majority manifested in a legislative act.<sup>33</sup> A statement made by Mr. Justice Pitney in the Hitchman Coal Case is relevant here:

Whatever may be the advantages of "collective bargaining," it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the unions to enter into agreements with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union.<sup>34</sup>

As already pointed out, the last phrase of this statement has been over-ruled by the Norris-LaGuardia and the National Industrial Recovery Acts. But the other parts, so far as I am aware, still hold, and are of great significance in considering the correctness of the National Labor Relations Board's decision in the Houde Engineering Case. If collective bargaining is not, as Mr. Justice Pitney says, bargaining at all unless it is voluntary, then those who remain non-union men and constitute a minority are deprived of their right to bargain collectively under a decision which forces them to accept conditions of work as established by representatives of the majority.

Moreover, employees do not ordinarily organize themselves. The initiative must come from employers or labor leaders. Either may be legitimate, but neither should be allowed to coerce, intimidate, or apply undue pressure. Employers sometimes curtail the freedom of employees to form a union of their own from fear and prejudice against organized labor; labor leaders may coerce and intimidate employees to gain power for themselves. The courts are likely to hold that employees have constitutional protection

<sup>32</sup> *In re Houde Engineering Corp.* (N.L.R.B., Release 141, September 1, 1934).

<sup>33</sup> Attorney-General Cummings announced on October 17 that the Department of Justice would not proceed against the company on the basis of the existing record. He also expressed doubt whether the case could be made to "stick" in court. *N.Y. Times*, October 18, 1934.

<sup>34</sup> *Hitchman Coal and Coke Co. v. Mitchell*, 245 U.S. 229, at 250-251 (1917).

against both types of coercion and exploitation, to the end that true collective bargaining may be secured.

Even less tenable, therefore, is the A. F. of L. contention that the National Recovery Act makes it the exclusive bargaining agency of labor. The Recovery Administration has been unwilling to concede that the law was intended to establish the representatives of the majority of *any groups* as the exclusive representatives of all the workers. Nor do I believe that the Court will uphold labor's interpretation. It is one thing for a majority group to gain such a right as an economic fact; it is quite a different thing to insist that such a right has been conferred by an act of Congress. As every one knows, liberty of contract is not always so complete that it may not be regulated in the interest of the public welfare. The labor contention would seem to require somewhat broader constitutional support. It will, I think, have to find its basis in the idea that trade unions are public welfare institutions, entitled to legal and governmental sanction. Court opinions offer no support for this proposition; rather they point to the opposite conclusion. Trade unions, the Supreme Court has said, "are not public institutions, charged by law with public or governmental duties, such as would render the maintenance of their membership a matter of direct concern to the general welfare. If they were, a different matter would be presented."<sup>35</sup>

This analysis leads to the conclusion that collective bargaining is not something that can be gained or established by law; labor cannot expect the government to bargain in its behalf. The Act merely gives legal status to labor representatives which exist in fact. Where organized labor has failed to establish itself in economic power, government can do no more than safeguard the workers in their efforts at self-organization. Other compulsion brought to bear upon the employer must come from organized labor and not from government.

Not least among the significant aspects of the National Recovery Act is its philosophy. It expresses in clear terms the view that collective bargaining between employer and employee must be accepted as sound public policy. A strong case for labor can be built on this foundation. Labor can insist on legal protection against any activity on the part of the employer which denies self-organi-

<sup>35</sup> *Coppage v. Kansas*, 236 U.S. 1, at 16-17 (1915).

zation and the right to bargain through representatives, but it can scarcely insist that government compel the employer to deal with an alleged majority where there may be other labor interests with perhaps equal claim to representation.

The sum of it all is that if labor is to secure its legitimate share in the government of industry, it must first lay the foundations for the exercise of such power within its own ranks. There must be greater mass organization, closer political unity, and less jurisdictional division among employees. As these words are written, the daily press reports a typical labor situation. Work on a four-million-dollar housing project has been halted two months, leaving hundreds of persons out of jobs, all because of a dispute between carpenters and steamfitters as to which group should cut recesses in floors for radiator piping.<sup>36</sup> The organization and structure of unions seem ill-adapted to the opportunities now open to labor. Craft union organization is out-moded both from the point of view of the development of our industrial system and from that of the need for the growth of the economic power of labor. Industry is now vertically organized under overhead controls which are, or may be, responsible to government; logically, labor also must be so organized and so controlled. If labor is to meet the challenge of our social and economic development and discharge the legal responsibilities which N.R.A. foreshadows, craft unions must give way to vertical or industrial unions.<sup>37</sup>

A step in this direction was taken on October 11 at the fifty-fourth annual convention of the A. F. of L. in San Francisco, when it was voted to organize mass-production industries along "vertical" rather than "horizontal" lines. But there is no suggestion of a complete reorganization of existing craft unions or a reconstruction of the A. F. of L. itself.<sup>38</sup> This decision is perhaps nothing more than a concession to recently organized unions in those industries, such as steel, cement, automobiles, and aluminum, in which the A. F. of L. had, until recently, made little or no progress.

<sup>36</sup> *N.Y. Times*, October 17, 1934.

<sup>37</sup> This view apparently has the support of the Administration. It is, as General Johnson has said, "a theme which many of us here entertain." Release No. 602, September 1, 1933.

<sup>38</sup> The membership of the Executive Council was, it is true, enlarged to eighteen, but the present composition is by no means reassuring to those who favor general reorganization along industrial or vertical lines. See, in this connection, Travers Clement, "The A. F. of L. Faces a Fact," *Nation*, October 24, 1934.

That the spirit of old craft unionism is still strong is shown by the fact that the chief internal problem before the San Francisco convention was a bitter dispute which split the building union group into two warring camps. This may well mean further intensification of jurisdictional disputes.

All of this requires vigorous, far-sighted, and imaginative leadership of which the labor movement as a whole stands today in sore need. The vision of labor leadership has been shortsighted and the objectives narrow. Legislatively, labor has sought chiefly to recall alleged erroneous judicial decisions; economically, labor leaders have aimed almost exclusively at higher wages, shorter hours, and better working conditions. That the main item in labor's program under the New Deal should have been a thirty-hour-week law affecting industrial workers was no accident; it was and is typical of labor statesmanship. Long before he went on the Court, Mr. Justice Brandeis used to talk about industrial democracy. By this he meant the right of labor representatives to sit in the councils that govern the affairs of industry. It is doubtful whether this idea ever seriously occurred to American labor leaders—certainly not as the main objective. Thus the embodiment of this very right in law, almost a gift on a silver platter, found labor ill-prepared to accept and use it.<sup>39</sup>

Since the days of Samuel Gompers, labor has been devoting too much time, effort, and money to securing legal rights by means of the statute books. And in this it has at times been seemingly successful. Too frequently, however, rights thus secured have turned out gold bricks. It is high time that labor became skeptical of Magna Cartas and carried on the real fight among the rank and file of workers. Power today, as always, depends upon the organization of men, not upon the enactment of statutes. If men will not organize, they cannot hope to have power in moulding the new legal-political relationships now to be instituted to govern both American capital and American labor.

<sup>39</sup> There is no doubt that the present purpose is to realize the opportunities which N.R.A. offers. The San Francisco convention adopted an elaborate policy with respect to N.R.A. The keynote of this policy is that labor must be made an active partner in the supposed partnership of government, industry, and labor. In the mind of labor, this especially required representation on the code authorities, enforcement of Section 7(a), and the outlawing of company unions. *Report of the Executive Council of the A. F. of L., 54th Annual Convention, October 1, 1934*, p. 47 ff.

## POLITICS, PERSONALITIES, AND THE FEDERAL TRADE COMMISSION, I

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### I

The Federal Trade Commission has been the object of more scholarly examination and critical discussion than any other administrative commission in the federal government. The statutory authority, the internal organization, and the administrative procedure of the Commission have all been studied. More specialized researches have thrown light on its regulation of competitive practices and its relations with the courts. Our purpose here is to view the Commission in its relations with business and with Congress and the President, in order to achieve some understanding of the political and economic factors that have influenced its activities.

Underlying both sets of relationships are the conflicts of economic groups and special interests which attempt to convert their force into political power when they touch the legislator or the President. The attempt here will be to explore some of these rather intangible aspects of the Commission's administrative experience.<sup>1</sup>

### II

The Federal Trade Commission arose out of an attempt by the political leaders of 1914 to dispose of a troublesome problem. Dissatisfaction with the Sherman Act was general, and the 1912 platforms of all three major parties dealt with the question of trusts and combinations. The control of monopolies challenged attention as a campaign issue. Demand that the anti-trust laws be made

<sup>1</sup> The recent study by Carl McFarland (*Judicial Review of the Interstate Commerce Commission and of the Federal Trade Commission*) conclusively demonstrated the hampering effect of judicial review upon the initiative and independence of the Commission. While this study admirably discloses the control by the courts, the political and economic factors that influence the Commission lay beyond the author's purpose. McFarland concedes that "to attribute the lack of success entirely to unsympathetic treatment at the hands of the judges would be error—causes are rarely so simple. Personnel and amplifying legislation, among other things, are of first importance."

more specific came both from the business interests and from the "trust-busting" element.<sup>2</sup>

President Wilson attempted to meet these divergent demands for remedial legislation by supporting two bills. One (later the Clayton Act) set out specifically to condemn certain practices as unlawful and "in restraint of trade." The other established an interstate trade commission to investigate corporate policy and organization and forestall malpractices by "pitiless publicity." This body was to take over and carry further the investigatorial function of the existing Bureau of Corporations. Before the measure was enacted, an important provision (Section 5) was added authorizing the Commission to prevent the use of unfair methods of competition in interstate commerce and prescribing a procedure by complaint, hearing, and orders to "cease and desist." According to former Commissioner Abram F. Myers, "Section 5 was added in the Senate as a sort of complement to the Clayton Act, which was undergoing the legislative process at the same time. It was thought that this catch-all provision would embrace all monopolistic practices not specifically enumerated in the Clayton Act, including minor abuses not worthy of the attention of the courts in the first instance."<sup>3</sup> The legislative debates show very convincingly that this general language was adopted with deliberate purpose: Congress was stating a broad ethical and economic principle. Apparently, Congress expected the Commission to deal with the prevention of monopoly rather than with the punishment of fraudulent practices,<sup>4</sup> but the intention of Congress with regard to the actual responsibilities of the commissioners remained vague. It

<sup>2</sup> "Business men, trade associations, and commercial and industrial interests to whom the uncertainty of the law had become exasperating . . . took the view . . . that after nearly a quarter of a century of experience with the anti-trust law, it should be possible for the statesmen in Washington to make up their minds just what conduct they wished to forbid, and to describe it in language which the citizen could understand." G. C. Henderson, *The Federal Trade Commission*, p. 17.

<sup>3</sup> Abram F. Myers, Address at the Institute of Public Affairs, University of Virginia, July 9, 1932.

<sup>4</sup> "It is not conceived that Congress, which laid down no definition whatever, intended to either limit or extend the matters which constituted unfair methods of competition prior to the passage of the Clayton Act, but that its object was the creation of a board of commissioners." *Kinney-Rome Co. v. F. T. C.*, 275 Fed. 665. See also George Rublee, "The Original Plan and Early History of the Federal Trade Commission," *Proceedings of Academy of Political Science*, Vol. XI, No. 4, p. 114 (Jan. 1926).

was clear that the President and the legislature wanted a stricter control of commercial practices. But what share of this task was to be borne by the Commission? Was the Commission to emphasize its investigatorial functions? Was it to attempt a broad interpretation of unfair methods of competition? Was it to coöperate with those business interests desirous of learning the limits of lawful combination? In 1916, Woodrow Wilson said to a group of business men: "It is hard to describe the functions of that commission; all I can say is that it has transformed the government of the United States from being an antagonist of business into being a friend of business."<sup>5</sup>

Since the possibilities for variety in interpretation were so great, the scope for pressure upon the commissioners was equally wide. By leaving their powers vague, Congress provided an opportunity for building up through administrative rulings a law-merchant. At the same time, the chance was given for partisan influence mightily to affect government relations with business.

In examining a complaint, the federal trade commissioners have to consider two questions: first, does the matter fall within their jurisdiction, i.e., is it interstate and is it an unfair method of competition? Second, does it appear to the Commission that prosecuting the offender "would be to the interest of the public?" The Commission, however, has not been able to interpret freely these vague criteria. The "public interest" presumably is the standard for all legal acts by responsible officials, but the phrase was added to the law in order to give the commissioners discretion in choosing cases for prosecution. The courts, however, have made this standard of public interest a jurisdictional requirement and have not hesitated to over-ride the judgment of the commissioners as to the admission of complaints.<sup>6</sup> The Commission has not enjoyed greater freedom of administration as a result of this statutory phrase.

<sup>5</sup> Address before Grain Dealer's Association, Baltimore, September 25, 1916.

<sup>6</sup> In the Shade Shop Case, the Commission took jurisdiction over a petty dispute between two little shopkeepers. Justice Brandeis, in overruling the Commission, stated: "In determining whether a proposed proceeding will be in the public interest, the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint, the public interest must be specific and substantial" (*F. T. C. v. Klesner*, 280 U.S. 19). When the Commission ruled that using false and misleading trade names constituted an un-

While the question of fairness in trade relationships is at bottom an ethical one, the task of the Commission is not to punish the wicked, but rather to decide what business practices should be eliminated in order to free competitive forces. The problems of trade methods which it must consider are those discussed by business men themselves in their trade associations and in their conventions. The Commission's question is: Does an unfair practice restrict the play of competition to *an extent* detrimental to the public interest? But what is to be understood by the "public interest," what is meant by "competition," and what constitutes an "unfair method?"

The administrative experience of the Federal Trade Commission centers largely around the efforts made to answer these questions. Learned treatises have followed the lines of judicial interpretation with great care. The purpose here is to touch other threads in the web of interests surrounding the Commission. An understanding of its administrative problems is not to be found in any one factor, but rather in the pattern made by the interweaving of many elements. Some of these may appear inconsequential; others are of unmistakable significance. All have contributed to making a difficult task still more difficult.

For years, the Commission was housed in a temporary war-time emergency structure excessively hot in summer, often extremely uncomfortable in winter. For years, the work of the Commission was in arrears, and cases were brought to court when the evidence was no longer fresh.<sup>7</sup> Its rulings have been presented in meager and unconvincing form, and its organization and procedure have been justly criticized.<sup>8</sup> The turnover in the staff has been exceptionally high. During the first ten years, six members withdrew to one that

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fair method of competition on the part of the Winsted Hosiery Company, Justice Brandeis stated that "as a substantial part of the public was still misled by the use of the labels which the Winsted Company employed, the public had an interest in stopping the practice as wrongful" (*F. T. C. v. Winsted Hosiery Co.*, 258 U.S. 483). Whether a complaint sufficiently affects the specific and substantial interests of the public remains for the courts to decide (*Ostermoor and Co., Inc. v. F. T. C.*, 16 F (2d) 962). Is the public misled into dreaming of impossible resiliency by looking at a trade-mark showing the hugely swelling contents of an unfinished Ostermoor mattress? Is the public interest concerned in the accuracy with which a particular breed of hogs is advertised? (*L. B. Silver & Co. v. F. T. C.*, 289 Fed. 985).

<sup>7</sup> *Annual Report*, 1924, p. 14.

<sup>8</sup> See Henderson, *op. cit.*, p. 334, and McFarland, *op. cit.*, p. 178.

stayed. With an average of 418 employees in 1920, 348 entered and 297 left the Commission. With 450 employees in 1930, 116 entered and 46 left the service during the year. The tenure of commissioners has been brief on the average, especially during the early years.<sup>9</sup> Of the original appointees, none served for more than about half of their allotted time. Since 1920, however, the actual tenure has increased, and during the last decade it has remained comparatively stable. Of recent appointees, Charles E. Hunt has served since 1924; Edgar A. McCulloch and G. S. Ferguson since 1927; Charles H. March since 1929. The term of Victor Murdock was six and one-third years, of Huston Thompson six and five-twelfths, of J. F. Nugent, six and nine-twelfths, and of W. E. Humphrey, eight and nine-twelfths. While brevity of tenure has been regarded as an explanation for the shortcomings of the Commission, it actually has not had much significance.<sup>10</sup> Of more importance is the influence exerted by the commissioners who remained for some years. Continuity in policy was disrupted not so much by frequent changes in commissioners as by the fundamental differences of opinion held by those who served longest in the body. Factionalism was aggravated by shifts in personnel, but it was the dissension within the Commission itself that created difficulties.

It seems apparent that from the beginning the Commission was in a precarious position; for not only were its legal powers vague and its resources inadequate, but its relations with Congress were uncertain and the parties coming within its jurisdiction often very powerful. The more important the business, the wider its ramifications and the more numerous its allies and subsidiaries, the closer it comes within the Commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business, and often "big business."<sup>11</sup> Certainly the Commission has played an insignificant part in curb-

<sup>9</sup> *Annual Report, 1925*, p. 4.

<sup>10</sup> For a contrary view, see T. C. Blaisdell, *The Federal Trade Commission*, p. 76.

<sup>11</sup> After reviewing the Commission's experience with the oil, aluminum, steel, and meat-packing industries, Blaisdell concludes that the attempts toward restoring competitive conditions have been of slight effectiveness. The Commission was not equal to the task. The studies published and the recommendations made by the Commission have been in the main disregarded. *Op. cit.*, p. 255.

ing the trusts. Its chief function today, as Abram F. Myers has said with some exaggeration, is "preventing false and misleading advertising in reference to hair restorers, anti-fat remedies, etc.—a somewhat inglorious end to a noble experiment."

The Commission can hardly be taken to task for going after easy game when the inadequate response from Congress is considered. The federal legislature has done nothing to support the Commission in developing its indefinite initial criteria into a body of administrative law for the regulation of business. The basic reasons for this may lie in traditional attitudes of respect for the courts, of suspicion toward bureaucracy, and distrust of official intervention even when intended to free competitive forces. But more immediate factors in the environment of the Commission indicate that "polities," in the sense of partisan and economic influences, has determined the course of administrative development. The Commission has suffered a fate which has been shared to some extent by the Federal Power Commission. Both agencies are called upon to deal with great corporations, and consequently they have been dragged around the political arena behind the chariots, sometimes of the "people's champions," sometimes of the "defenders of honest business" and the "foes of socialism." The Trade Commission has been a focal point of attack for those who were dissatisfied with the prevailing governmental policy toward business. The "masses" versus the "moneyed interests" is a perennially good issue for a politician to talk about, but it is not a problem for a bureaucrat to deal with. Only with strong political support can the Federal Trade Commission consistently administer its statutory responsibilities. Congress, rather than striving to strengthen the independence of the Commission, has actually hampered its development. A former commissioner (Abram Myers) testifies that "senators who would not think of seeking to influence a court in the decision of a case pending before it have no compunction about stalking the halls of the Commission and offering *ex parte* arguments and representations concerning cases pending before it. This attitude toward the Commission also is reflected in the efforts of individual legislators to control its acts; and it is not uncommon for the Commission to be under fire in the Senate for exercising its powers too gingerly and in the House for daring to use them at all."<sup>12</sup>

<sup>12</sup> *Anti-Trust Law Symposium*, p. 133.

The Commission has indeed been the victim of many oratorical outbursts in Congress and of protest from interests outside. Democrats and Republicans, both liberal and conservative, have at different times criticized its work in scathing language. "I have been overwhelmed for several years with complaints from business men concerning the Federal Trade Commission for its inefficiency, incompetence, and inability to discharge the public business," declared the conservative Penrose of Pennsylvania in 1919; "I have hardly heard an epithet of condemnation in the English language that has not been visited upon every individual member of the Federal Trade Commission."<sup>13</sup> In 1926, Senator King, in order to express his disapproval, introduced a bill to abolish the Commission. He denounced its policy in a two-hour speech—"a Federal Trade Commission," he said "that is blind to trusts and combinations and monopolies and unfair methods of competition in commerce and misinterprets the law is not only a useless appendage but a real menace."<sup>14</sup> In 1919, the Commission, pursuing a policy of rather strict control, was denounced as a hindrance to business; in 1926, under a less stringent régime, it was denounced as an enemy of the people. This administrative agency is expected to interpret, under a vague mandate from Congress, an issue concerning which there is no stable consensus of opinion. Congress has set no clear goal; and political vicissitudes have prevented the Commission's shifting personnel from evolving one. A scrutiny of the *Congressional Record* and of the hearings before the Appropriations Committee reveals little appreciation of the problems of the Commission as an administrative agency. When congressmen discuss its affairs, their interest is obviously dictated by the situation in their own locality.

Whether viewed in its relations with Congress, with the courts, or with business, the Commission has generally been confronted with grave difficulties in attempting to enforce its statutory responsibilities. The political and economic elements that pressed for the accomplishment of the purposes of 1914 have grown weaker. The story becomes clear if we consider chronologically those experiences which bear upon this discussion.

<sup>13</sup> *Cong. Rec.*, August 22, 1919, p. 7311.

<sup>14</sup> *Cong. Rec.*, Feb. 9, 1926, p. 3630.

## III

During its first years, the Commission proceeded cautiously. The first three annual reports show a number of investigations under way, but more than a third of the applications for the issuance of complaints against unfair methods of competition were disposed of informally. Many communications were received from business men commending the purpose of the Trade Commission Act, although the Commission "made no attempt to define in general terms what methods of competition were unfair."<sup>15</sup> During 1918 and 1919, the Commission was much occupied with war work. In its brief existence before the war, problems of organization and preliminary study of its legal powers scarcely left time for the development of policy. The first undertaking of major importance was the food inquiry authorized by President Wilson in 1917. This investigation took much time and money and resulted in a number of reports, the most notable of which dealt with the meat-packing industry. What happened to the Trade Commission when it interfered with the meat-packers provides a concrete illustration of the political and administrative problems involved in attempting to regulate a powerful industry. Lobbyists for the industry fought bitterly to prevent an investigation and strove to render its results ineffective. "The packers," stated Senator Harris, "have tried to employ men who had influence with members of Congress or the government agencies. They have not stopped at anything in their propaganda."<sup>16</sup>

In August, 1919, in response to Senate Resolution 177 (initiated by Senator Norris), the Commission sent to Congress the unpublished report prepared for the President. The report was ordered to be printed as a public document in September, and a storm of indignation arose soon afterwards. The evidence offered by the Commission indicated unlawful combination and restraint of trade by the five largest meat-packers—Swift and Company, Armour and Company, Morris and Company, Wilson and Company, and the Cudahy Packing Company. The Commission recommended changes in the organization of the meat-packing industry and public ownership of some branches.<sup>17</sup> The sweeping

<sup>15</sup> *Annual Report*, 1916, p. 6.

<sup>16</sup> *Cong. Rec.*, October 22, 1919, p. 7310.

<sup>17</sup> *Annual Report*, 1919, p. 38.

character of this investigation and the bold changes suggested caused a political back-fire almost fatal to the Commission. Five federal officials aroused the enmity of five great meat-packers, and the battle was on.<sup>18</sup>

The response in Congress was divided. Said Senator Smoot: "I think the report of the Trade Commission is not only sensational, but the conclusions in many respects are absolutely false." Many bills and resolutions were introduced and the debates were long and heated. The case for the packers was presented at length.<sup>19</sup> On October 20, Senator Watson introduced a resolution which was apparently intended to punish the Commission for its boldness in attacking big business and recommending government ownership of the stock-yards. Watson demanded a thorough investigation of the Commission on the ground that certain employees were believed to be engaged in socialist propaganda and in furthering the growth of socialistic organizations. "If the Senator can discredit the Commission in this investigation," one of his colleagues remarked, "he has accomplished more for the packers than they could for themselves with all their millions spent in lobbying and propaganda."<sup>20</sup> The federal employees suspected were exonerated after a private investigation, but later they were dropped from the Commission. It was charged that the desire to placate Senator Watson (of the Appropriations Committee) accounted for the discharge of these civil servants.<sup>21</sup>

Meanwhile, the Attorney-General, on the basis of the Commission's evidence, had announced that a criminal suit would be brought against the packers. The latter thereupon entered into negotiations for a consent decree. The Department of Justice differed from the Federal Trade Commission as to what the packers should be allowed to do. The courts accepted the Department's interpretation and preëmptorily forbade the spokesmen for the Commission to present their case.<sup>22</sup> Here the officials were at odds as to the government's view. Moreover, no sooner was the consent decree approved by the courts than efforts were

<sup>18</sup> The advertising expenditures of Swift and Company alone by 1919 had risen to nearly six-fold the total appropriation of the Commission. Blaisdell, *op. cit.*, p. 190.

<sup>19</sup> *Cong. Rec.*, October 3, 1918, pp. 11041-51.

<sup>20</sup> *Cong. Rec.*, December 3, 1919, p. 67.

<sup>21</sup> G. T. Odell, "The Commission Yields to Pressure," *Nation*, January 12, 1921.

<sup>22</sup> *Annual Report*, 1921, p. 46.

started to modify it. The wholesale grocers were opposed to any modification of the decree that would permit the packers to deal in products unrelated to meat. But the packers had well organized systems for distributing food products. Why should they not be allowed to compete with the wholesale grocers or with the chain stores? What *kind of competition* was in the public interest? The relative nature of its criteria was demonstrated for the Commission. Many were the interpretations that might have been placed upon the phrase "unfair methods of competition," but as events continued to prove, its meaning was to be determined not by the Commission alone but by a combination of economic and political elements, among which this regulatory body was at times scarcely *primus inter pares*. The questions falling under its jurisdiction touched conflicting economic groups and involved likewise other branches of the government. Congress, the Chief Executive, the courts, and various administrative departments were at times concerned with the situation. There was no inherent consistency or unity on the part of the government.

The packers were desirous of getting from under the jurisdiction of the Commission. They seemed to feel that they would receive more sympathetic treatment from the officials in the Department of Agriculture.<sup>23</sup> Before the responsibility for regulating the meat-packing industry passed to the Department of Agriculture, the political strength and legal resourcefulness of big business were clearly demonstrated. The Commission received its baptism of fire when it engaged the five titans of the stock-yards. The Packers and Stockyards Act of 1921 transferred the supervision of the meat-packing industry to the Secretary of Agriculture. This move was strongly opposed by national organizations of women, farmers, and workers, among which the National League of Women Voters, the National Grange, and the railroad brotherhoods voiced protest.

The reaction of organized groups and of their spokesmen in Congress to the meat-packing investigation showed the difficulty of protecting the impartiality of an independent commission. Assuming this body to be unbiased in its findings, nevertheless the very character of the inquiry aroused the enmity of certain

<sup>23</sup> See Hearings before the Committee on Agriculture and Forestry, U.S. Senate, 65th Cong., 3rd Sess., on S. 5305, p. 17.

interests and attracted the support of others. Samuel Gompers testified before the conference committee: "The Federal Trade Commission has proved its value in the many investigations it has made. It has been found that its findings cannot be influenced and that its work is in the interest of all the people instead of a few."<sup>24</sup> Some groups thus supported the work of the Commission and identified its aims with their own. The gratuitous loyalties that closed in about the Commission tended to obscure its disinterested character. Farmers, workers, and organized liberals were ready to proclaim the Commission their champion.

Then in 1920 an event occurred that precluded any such possibility. Here at the very beginning of the Commission's development the Supreme Court intervened, and in the Gratz Case (233 U.S. 421) asserted its authority to define the scope of the Commission's powers. The vague terms of the statute were not to be interpreted freely by the Commission. The development of a law of business practices by administrative rulings was thus checked at the start by judicial decision and held within the precedents of common law.<sup>25</sup> Very early in its career, the Commission learned of the pitfalls in its way. If the commissioners trod upon the toes of important industrialists, they aroused protests from important politicians. Disagreement with the Department of Justice added for the commissioners difficulties in making their rulings effective, and the growing restrictions of judicial review further limited their authority. The commissioners were slow to admit this development, if we can accept their annual reports as any indication of their attitude. In 1922, they reported as the notable feature of the year "the development of the law of unfair competition as exemplified by those decisions in the courts which further established and defined the powers of the Commission."<sup>26</sup> Repeated efforts were made to widen the concept of unfair methods of competition by introducing new principles regulating business practices. The Commission condemned "tying contracts" whereby a manufacturer, because of his control over the supply, bound dealers to observe certain conditions. The Commission likewise regarded the policy of "resale price maintenance" as an unfair trade practice. The Beech-Nut Packing

<sup>24</sup> *Cong. Rec.*, August 9, 1921, p. 4786.

<sup>25</sup> McFarland, *op. cit.*, pp. 45-47.

<sup>26</sup> *Annual Report*, 1922, p. 2.

Company refused to sell its products to merchants who offered these articles to the public at a different price from that fixed by the Company. The Commission decided that price discrimination based on trade status was an unfair competitive device. Thus a manufacturer was not allowed to charge a wholesaler one price and a coöperative purchasing agency of retailers another price. Exclusive dealer arrangements were likewise proceeded against by the Commission as fostering monopoly, lessening competition, and constituting an unfair trade practice. The point of significance for this discussion is the fact that the commissioners, prior to 1925, made positive efforts to extend their powers and build up new criteria with regard to business behavior.

Writing in 1924, Henderson saw "no reason why the Federal Trade Commission should not realize fully the promise of the legislation of 1914," provided a few changes in procedure were made.<sup>27</sup> In other words, in the adverse decisions that had been handed down by the courts, he found no fundamental obstacle to the development of the Commission's power.

If between 1920 and 1923 the courts circumscribed the powers of the Commission, it was likewise during that same period that the commissioners were most aggressive in seeking to extend their authority. While a "liberal" majority dominated the Commission, adverse court decisions did not discourage efforts toward clarification and expansion of the concept of unfair methods of competition. When the composition of this board changed, its policy changed. There is no connection between this change in policy and the repulses administered by the courts. McFarland concludes that "the restraining hand of the judiciary was an important factor in turning the attention of the Commission to activities other than trade regulation through orders enforceable only in the courts." The Commission, however, cannot be regarded as a passive body easily turned about by the courts. Dominated by Murdock, Nugent, and Thompson, it differed basically from the Commission of Humphrey, Hunt, and Van Fleet. The judiciary cannot be held responsible for the Commission's quiescent attitude dating from 1925.

The explanation is to be found rather in political changes and in the personal views of the new appointees to the Commission

<sup>27</sup> Henderson, *op. cit.*, p. 342.

after 1925. It was not the judges but the politicians that turned "the attention of the Commission to activities other than trade regulation." It is difficult to see the correlation between the court decisions and the course of administrative policy that McFarland emphasizes. The policy of the Commission changed in 1925, and the courts were concerned for two years or more with passing upon cases undertaken by the Commission before this date. Once these cases were disposed of, no major disagreements as to statutory interpretation occurred between the courts and the Commission. This is not attributable to the courts' defining the Commission's sphere clearly, but rather to a shift in personnel which brought on the Commission a majority who were of a like mind with the courts. Moreover, under the changed procedure of the Commission many questions of unfair methods after 1925 never reached the courts. The Commission's new relations with business meant that the possibility of judicial review was side-stepped.

Evidence to substantiate this case can be found by comparing the Commission proceedings of 1924 and 1925. In 1924, Commissioner Van Fleet was the dissenting voice. The grounds for his disagreement with the majority indicate a more restricted view of the Commission's interstate jurisdiction in regulating unfair methods of competition. He was more critical of the evidence relied upon in condemning industries and he was less ready to interfere with private business "in the public interest."

By 1925, Thompson and Nugent had become the dissenting minority. Their conception of the Commission's function was in sharp contrast with that of Van Fleet. They disagreed with his narrow interpretation of the Commission's authority. To them, the Commission's function was essentially "prophylactic"—not merely corrective but also preventive of business abuses. To dismiss the charges against a business man guilty of an unfair trade practice upon promise of reform, but not to make public the facts of the case and the findings of the Commission, was to fail in deterring others. "The making of wrong a personal matter," Thompson stated, "causes a shrinking by the offender and may be a hardship on him, but the rights of the consuming public to be put upon notice, and of the competitor to be protected from unfair business practices, far outweigh the damage done to the reputation of the one committing the wrong."<sup>28</sup> Thompson was

<sup>28</sup> Dissent in *Federal Trade Commission v. Mack, Miller Candle Company*.

inclined to emphasize the interest of the consumer; Van Fleet that of the entrepreneur. The welfare of both are implicit in the welfare of the public. But at what point shall one special interest be regarded as closer to the public interest? The phrases and words supposed to serve as criteria in making judgments have entirely different meanings for these dissenting commissioners. What constitutes deception? What is a monopoly? When is the public interest affected? Underlying the answers given these questions were fundamentally different philosophies of economics and politics. It is the attitude of the individual commissioner toward business, rather than the relations of the courts to the Commission, that explains, in chief measure, the significance of the Federal Trade Commission as a regulatory agency. Here is an outstanding case where conflicting political and economic influences have disrupted the course of administrative development.

*(To be concluded in the next issue)*

## THE INTERNATIONAL SETTLEMENT AT SHANGHAI, 1924-34

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### I

It is becoming increasingly clear that the decade following the Washington Conference constituted a distinct epoch in the Far East. The revolutionary surge of Nationalist China with its war-cry, "abolish the unequal treaties," threw the foreign Powers on the defensive for the first time in a century. Skillful Chinese diplomacy supported by physical, moral, and economic force swept away foreign rights and privileges of long standing. Expansive world prosperity bolstered up a sagging Japanese financial structure and encouraged all the Powers to respect the self-denying pledges of the Washington treaties and the demands of Chinese nationalism. This period terminated with the Japanese attack on Mukden in September, 1931. As hard times put increasing strain upon the economy of the Island Empire, the Japanese army, with continental ambitions rekindled, launched a bold campaign for hegemony north of the Great Wall—and possibly south.

During the nineteen-twenties, the center of gravity in China shifted to the Yangtse Valley. Shanghai, the foreign-controlled metropolis which stands at the cross-roads of Far Eastern commerce and dominates an immense hinterland, assumed a position of increasing importance in the domestic economy and international polities of China. Long the gateway of foreign influences, political, economic, and cultural, this cosmopolitan city now felt the force of new currents tugging at the base of the structure of foreign privilege. It was only natural, in fact, that ideas imported into China from the West should demonstrate their power at their premier port of entry. Strikes, riots, boycotts, and menacing armies—these manifestations of militant anti-foreignism in the years 1925-27 startled the foreign authorities at Shanghai from their complacency. The first response was conciliation; the second, the massing of foreign troops.

When the tension was eased in 1927 by the ascendancy of the moderate wing of the Kuomintang under General Chiang Kai-shek, a period of change was inaugurated in the International

Settlement at Shanghai. Its foreign régime was modified to admit a measure of Chinese control over municipal affairs. This re-orientation of Settlement policy received the blessing of Mr. Justice Feetham, who made a study of the Settlement in 1930-31 at the invitation of the foreign authorities. The South African jurist, accepting the return of the settlement to China as the ultimate goal, reported in favor of further cautious reforms admitting the Chinese to active coöperation in a more complete civic partnership. At the same time, the progress of extraterritoriality negotiations between China and the Powers made it appear by 1931 that foreign privilege would shortly be abolished in law as it had already been nullified in practice except in a few foreign-controlled centers. It was generally recognized, however, that the new day would dawn but slowly at Shanghai, where a determination to safeguard foreign interests considered vital led the Powers to insist upon the necessity of a transitional régime.

The outbreak of Sino-Japanese hostilities brought fresh complications. The process of change at Shanghai has since been retarded in tempo, if its direction has not actually been reversed. The Nanking government, threatened by agrarian Communism to the south and west, and by Japan in the north, has been unable to continue its revisionist program either by applying frontal pressure or by enlisting foreign aid. With the post-war concert of the Powers now split wide open, and political uncertainty prevailing throughout the Far East, Shanghai affairs have been allowed to drift. The dramatic turn of events along the land frontiers of China, however, should not obscure the importance of developments in the Yangtse Valley. The present lull in political changes at Shanghai affords an opportunity to appraise the effects of shifting political and economic tides upon the life of that city, whose status presents many of the typical aspects of present-day imperialism, together with certain unique opportunities for experiment in international administration.

Shanghai owes its strategic position in the economy and politics of the Far East to a combination of geographic, historical, and political factors. The natural outlet for a vast interior region both fertile and populous, this treaty port accounts for more than one-half of the foreign trade of China and approximately one-third of her modern industry. It is also the financial capital and safety deposit vault of a country whose general state of insecurity has

driven large hoards of liquid wealth to this sanctuary.<sup>1</sup> Closely involved in the economic primacy of Shanghai is the heavy concentration within the foreign settlements of foreign population and property interests in China. Foreign investment in China has been mainly the investment of ownership capital in a few areas under foreign control. The billion-dollar stake in Shanghai in 1931 represented nearly one-half of the total foreign direct business investment (excluding government obligations) in China proper (including Hongkong) and Manchuria, or two-thirds of the total for the eighteen provinces (including Hongkong). Approximately two-thirds of this Shanghai investment was British-owned.<sup>2</sup> The growth since 1914 of Japanese interests at Shanghai—shipping, trading, banking, and industrial—explains in part why Sino-Japanese hostilities at Mukden spread within a few months to Shanghai.

Greater Shanghai, with its population of more than three millions, is made up of three mutually independent municipalities—respectively Chinese, French, and international in their control. We shall confine our attention chiefly to the International Settlement, for here the major part of the business activity of the city is concentrated and here arise the more complex questions of international control.

The origins of the International Settlement may be briefly recalled. In 1845, the British consul at Shanghai and the Chinese Taotai (intendant of circuit and superintendent of customs), each wishing the other "daily happiness," agreed upon an area to be set aside for the residence of British merchants in accordance with the treaty of Nanking (1842). Subsequently, French and American settlements were likewise established. In 1863, the British and American settlements were amalgamated to form the Foreign (International) Settlement. A municipal council, elected and supervised by foreign taxpayers, was created to administer the self-governing municipality under the terms of the Land Regulations, a municipal constitution approved by representatives of China and the Treaty Powers. The Land Regulations assign

<sup>1</sup> C. F. Remer, *Foreign Investments in China* (New York, 1933), p. 97.

<sup>2</sup> *Ibid.*, p. 395. It is worthy of note that of more than thirteen billions invested abroad by Americans between 1912 and 1930, only about one per cent found its way to China. Cf. Paul D. Dickens, *A New Estimate of American Investments Abroad* (U.S. Department of Commerce, *Trade Information Bulletin*, No. 767, Washington, 1931), pp. 24, 27.

certain functions to the consuls of the Treaty Powers. They elect the members of the "Court of Foreign Consuls" before which the Council may sue or be sued in its corporate capacity, and their approval, together with that of the ministers of the Treaty Powers, is required for alterations in the municipal by-laws. The autonomy of the Settlement in respect to jurisdiction over its Chinese population has little foundation in the original treaties. Its explanation is rather to be sought in the historic process by which the foreign community, with the justification of "necessity" and the protection of extraterritoriality and gunboats, evolved a municipal régime patterned on Western concepts of security and orderly government. Over a period of sixty years, Chinese authority in matters of courts, police, taxation, and legislation was increasingly excluded from within the expanding Settlement boundaries—a development in which Chinese officials grudgingly acquiesced.<sup>3</sup> With this favorable conjuncture of geographical and political factors, Western business enterprise has led in building up along the mud banks of the Whangpoo River the great urban center of China and one of the chief ports of the world.

## II

When Nationalist China threw down its challenge to foreign rights throughout the country, the tide of foreign control at Shanghai commenced to ebb. The years following the riot of May 30, 1925, with its bloody climax, have witnessed innovations along two main lines: (1) the admission of resident Chinese to a share in municipal government, followed by the acceptance of greater municipal obligations towards the Chinese community, and (2) a qualified recognition of the jurisdiction of the National Government of China over certain aspects of Settlement affairs.

In 1863, the foreign diplomats in Peking, at the suggestion of the American minister, had declared jointly that there should be "a Chinese element in the municipal system, to whom reference shall be made, and assent obtained to any measure affecting the Chinese residents."<sup>4</sup> Sixty-five years passed, however, before this principle was put into effect. Three Chinese were at last added to the Council in 1928, and two years later the number was increased to five. The normal foreign membership in recent years has been

<sup>3</sup> Cf. *Report of the Hon. Mr. Justice Feetham, C. M. G., to the Shanghai Municipal Council* (Shanghai, 1931), Pt. II, Ch. 5.

<sup>4</sup> *Ibid.*, Vol. I, pp. 94-95.

five British, two Americans, and two Japanese. An effort has also been made to appoint qualified Chinese to a few responsible posts on the municipal staff.<sup>5</sup> Needless to say, municipal harmony has been greatly improved by the granting of a limited franchise to the Chinese community, which pays two-thirds of the municipal taxes and constitutes ninety-seven per cent of the total Settlement population of one million. How much independent leadership the Chinese councillors have exercised is difficult to determine because of the privacy of Council meetings, and the tradition of collective responsibility before the public. In February, 1934, the Chinese Ratepayers' Association, prompted perhaps by the pressure of the Japanese for greater influence in Settlement affairs, petitioned unsuccessfully for an increase in the number of Chinese councillors from five to nine, the present number of foreign representatives.

Under the Land Regulations, wide powers are concentrated in the Council. Ratepayers' meetings are usually perfunctory in character. The franchise of both foreigners and Chinese is closely limited by a property qualification;<sup>6</sup> and the Council membership, foreign and Chinese, is drawn very largely from the ranks of big business.<sup>7</sup> The German and Russian communities, important foreign minorities which no longer enjoy extraterritorial rights in China, are not represented by nationals on the Council. Thus, despite the significant admission of Chinese to a share in the

<sup>5</sup> The personnel in the upper ranks of the staff remains predominantly British, but Chinese have been appointed to the following positions: assistant secretary, adviser on municipal affairs, deputy police commissioner, and auditor. The Chinese taxpayers are also permitted to elect six Chinese to the Council's advisory committees as well as two land commissioners. In 1933, six young Chinese graduates of the Central Political Institute at Nanking were attached to the Council's staff for a four months' training period.

<sup>6</sup> Foreign taxpayers cast a record vote of 1,787 in the elections of March, 1934. (*North China Herald*, March 28, 1934, p. 489). The total number of eligible voters is approximately twice this figure, while the foreign population of the Settlement is somewhat in excess of 26,965, the official figure for 1930. Chinese taxpayers cast a total of 2,011 votes in the March election of one-third of the board of directors of the Chinese Rate-payers' Association, which in turn elects the Chinese members of the Municipal Council. The remaining two-thirds of the board are chosen by commercial organizations and resident guilds (*North China Herald*, March 30, 1934, p. 523). The 1930 census puts the Chinese population of the Settlement at 971,397.

<sup>7</sup> The present chairman of the Council, for example, is one of several councillors closely affiliated with important real estate interests. He is also a director of the local bus company and of an investment concern which has substantial holdings in the tramway lines. Two of the pressing problems now before the Council are road-widening and the reorganization and control of transportation facilities.

responsibility of government, the municipal régime as at present constituted remains highly oligarchical in character.

With Chinese representation on the Municipal Council, there has come halting acceptance by the foreign community of what Mr. Justice Feetham called "the civic point of view." This is the principle that Chinese residents of the Settlement are not simply interlopers to be tolerated on sufferance, but members of the community contributing largely to its prosperity and entitled to the benefits customarily afforded by progressive municipal governments. The recognition of this principle was signalized by the admission of Chinese to the municipal parks in 1928 for the first time. It was also given effect in the field of education where the Council had long denied any "absolute duty" to educate either foreign or Chinese children in municipal schools. In 1931, the authorities adopted a new policy stated to be "the provision of suitable educational institutions for the children of the residents in the International Settlement and those who directly or indirectly contribute to the rates [taxes], irrespective of nationality." Between 1929 and 1933, appropriations for foreign municipal schools almost doubled; for Chinese schools they more than quadrupled. With increasing grants-in-aid to private schools as well, the Council last year for the first time in its history spent more for Chinese than for foreign education. Municipal primary and secondary schools for Chinese in 1933 reached the number of ten, with an enrollment of approximately 5,500 at the close of the year.

To abolish racial discrimination in the benefits of municipal rule is one thing; to enlarge those benefits in conformity with standards prevailing in the West, in many colonial areas, or even in certain progressive Chinese cities, is another. The school building program adopted in 1931 was to provide accommodation by the end of 1938 for seven and one-half per cent of the Chinese children of school age in the Settlement. Even this modest aim is apparently too much for the taxpayers, for last January the Council decided upon curtailment. The park facilities of the Settlement are estimated at one acre to every 8,000 inhabitants, a ratio which, according to the mild-spoken *North China Herald*, "compares terribly even with those congested cities of Manhattan and Berlin." A twenty-cent admission fee reserves these precious acres for the more well-to-do minority. While land values in terms of silver have at least quadrupled since 1920, congested

slum areas have multiplied at a rapid rate. Health services and hospital facilities for indigent foreigners and Chinese, especially for the latter, are grossly inadequate, as pointed out by an official investigating commission in 1932. Little has yet been done to remedy the deficiency. It may be said in fairness that a comparison of Shanghai with an American or European city of comparable size is unjust, and that the special position of the Settlement calls for unusually heavy expenditures on military and police protection. Nevertheless, the authorities have yet to face squarely the social problems created by the rapid growth of an urban proletariat.<sup>8</sup> Tax rates in the Settlement are unusually low and the powers-that-be are reluctant to sanction any upward revision. Until adequate financial provision is made for meeting the pressing needs of the community, the title "Model Settlement" will invite the retort "model for whom?"

### III

New questions involving the external relationships of the International Settlement have arisen in recent years with the creation in adjoining areas of a new Chinese municipality, the City Government of Shanghai. This energetic administration has made substantial headway since 1927 in the fields of public works, utilities, education, and other municipal services. Its long-range Regional Plan calls for the urban development of a large area adjoining the foreign settlements and the creation of a new harbor at the mouth of the Whangpoo River to supersede the congested port facilities of the foreign settlements farther up the channel. Except for an impressive civic center partially completed, this Plan is little more than a paper plan today. Its fulfillment will call for a state of security, a supply of capital, and standards of administration lacking at present. It is realistically based, however, on what now appears to be the natural drift of the expanding city and may in time affect real estate values and port revenues in the constricted foreign areas. The modernization of the Chinese metropolitan region is expected to facilitate the eventual return of the foreign municipalities to Chinese control.

The City Government has precipitated a major controversy

<sup>8</sup> Steps have recently been taken, however, to ameliorate the distressing plight of the ricksha-puller. The question of factory regulation in the Settlement is discussed below, pp. 1040-1043.

with the authorities of the International Settlement by challenging their jurisdiction in the External Roads Areas. In these two large extra-Settlement areas, the Municipal Council has acquired land for road-building, extended municipal services, collected taxes, and even exercised police powers. For years, increasing congestion in the Settlement impelled expansion, and despite continual conflict over police authority there was no effective Chinese opposition to the extension of foreign municipal activities until 1925. In July, 1930, however, the Council opened negotiations with the City Government looking toward the return of the disputed areas to Chinese control. It was hoped that a compromise arrangement could be made along the lines proposed at the time by Judge Feetham.

A settlement of this perplexing controversy seemed near at hand in 1932. But the Japanese attack at Shanghai and the stiffening of Japanese policy intervened to alter the situation. The Northern External Roads Area is the place of residence of a large section of the Japanese community, which naturally opposes its renditon. It was occupied at once by Japanese troops when hostilities broke out and served as a base of operations against the Chinese forces. Since the signing in May, 1932, of the peace agreement creating a neutralized zone around Shanghai, the Japanese navy has built in the Northern Area a huge concrete structure, ostensibly a hospital and barracks for a garrison of 2,000 men, but in reality nothing less than a fortress.<sup>9</sup> This building, situated so as to dominate the External Roads Area, the chief railway station of Shanghai, and the new Chinese civic center, leaves little doubt as to Japanese intentions in this region.

Meanwhile negotiations over the future of the extra-Settlement Roads have become a three-cornered affair. In July, 1932, the Japanese rejected a *modus vivendi* satisfactory to the Chinese and the other foreign representatives on the ground that the participation offered them in the joint-control scheme was inadequate. For two years, the negotiations have been deadlocked. Conflicting claims to jurisdiction in these disputed areas are likely sooner or later to precipitate a serious clash, although the Chinese have not yet made any determined effort to force the issue.

<sup>9</sup> In May, 1934, the strength of foreign military forces in Shanghai was as follows: American, 1,800; Japanese, 1,500-1,600; French, 1,450; British, 1,071 (*North China Herald*, May 23, 1934, p. 264.)

With the creation of the National Government at Nanking and the reorganization of the Chinese municipality in Shanghai, the Chinese have sought to extend the jurisdiction of certain governmental agencies within the boundaries of the International Settlement. The broad question thus raised is whether by piecemeal modification this foreign area will gradually be brought within the orbit of Chinese control.

The incident of May 30, 1925, led to a widespread demand for rendition of the foreign-dominated Mixed Court of the Settlement. This court had jurisdiction over all Chinese and those foreigners who did not enjoy extraterritorial rights. By agreement between China and the Treaty Powers, it was superseded on January 1, 1927, by a Provisional Court, and this in turn was replaced three years later by two new courts, the Shanghai Special Area District Court and its appellate division, the Second Branch Kiangau High Court.<sup>10</sup> In these courts, Chinese judges enforce modern Chinese law codes as well as the land regulations and by-laws of the Settlement. Important controls over the operation of the courts, however, are reserved to the Municipal Council. This compromise arrangement has worked to the reasonable satisfaction of both parties, although, especially in the earlier years, difficulties arose over various illegal attempts on the part of Chinese military commanders and administrative bureaus to extend their jurisdiction into the Settlement by way of the courts. In the suppression of Communist activity, the municipal police have co-operated effectively with Nanking. It may be added that the failure of the Chinese courts in the Settlement to deal severely with the illegal activities of boycott organizations during the winter of 1931-32 was a *casus belli* at Shanghai. With the multiplicity of courts caused by the persistence of extraterritoriality, there continues to be a measure of confusion and uncertainty in the judicial arrangements of Shanghai, but less perhaps than the clumsiness of the system might lead one to expect.

The issue of Chinese jurisdiction in the International Settlement has also been raised in the matter of taxation. An important feature of the vaunted security of the Settlement has been the immunity of both foreign and Chinese firms from Chinese taxes,

<sup>10</sup> The old Mixed Court of the French Concession was replaced in 1931 with a similar arrangement. Both agreements were renewed for a three-year period in February, 1933.

excepting tariff duties and a nominal land tax.<sup>11</sup> Foreign business, which is largely exempt from home taxation, has had to bear only the comparatively light burdens of municipal taxes, except in so far as operations outside the Settlement brought it within reach of the Chinese authorities. Whether foreign firms within or without the foreign areas of China are legally subject to Chinese taxation has long been a matter of dispute. The exemption of Chinese firms in the Settlement is clearly devoid of treaty sanction. The local community at an early date, however, found Chinese taxes on Chinese residents a burden on business enterprise. By the turn of the century, therefore, the Settlement authorities were barring troublesome Chinese tax agents from the foreign area and affirming the principle "that goods as well as other property within the limits of the said concession are under Municipal protection and without the jurisdiction of the Chinese authorities."<sup>12</sup>

Circumstances compelled a modification of this practice in the post-war decade. The Extraterritoriality Commission recommended in 1926 that foreigners in China be required to pay "such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese government and recognized by the Powers concerned as applicable to their nationals."<sup>13</sup> This principle has been carried out informally in a limited way. The National Government has been collecting certain excise taxes, such as those on tobacco, cement, flour, and yarn, from both foreign and Chinese firms in the Settlement. Foreign business men and diplomatic representatives have acquiesced as a matter of business and political expediency. Furthermore, the Municipal Council, by means of a special police squad, has been serving since 1929 as the administrative agent of the Chinese government in enforcing the collection of the stamp and rolled-tobacco taxes upon small Chinese firms in the Settlement.

In so far as the immunity of the Settlement from taxation means chiefly the evasion of irregular levies to finance destructive civil wars and to line the pockets of Chinese warlords, it is open to little objection. It is difficult to defend, however, when it exempts

<sup>11</sup> Speaking strictly, this so-called tax on land is rent paid to the Chinese government for the perpetual lease of land.

<sup>12</sup> Letter from the senior consul to the Taotai, dated July 2, 1899. Quoted by Feetham, *op. cit.*, Vol. I, p. 107.

<sup>13</sup> *Report of the Commission on Extraterritoriality in China* (Washington, 1926), p. 109.

the richest port of China from its proportionate share of the tax burden of constructive national or regional government. Foreign business interests are naturally reluctant to yield this privilege, and find influential allies in their Chinese competitors and colleagues. In the case of Chinese firms, the arrangement referred to above affords a means of collecting within the Settlement national taxes regularly levied elsewhere, while at the same time the administrative authority of the Council is unimpaired. Precedent has thus been established for a procedure which may have wider applications in the future.

Vlasco Ibanez is reported to have said of Shanghai: "It is like nowhere else on earth." One may echo this sentiment in observing that this large industrial center is totally devoid of factory regulation except for a few building rules and fire regulations. Here, among some 360,000 industrial workers, of whom eighty per cent are women and children, unbridled exploitation exists in its rawest forms.<sup>14</sup> Poverty in China is not confined to treaty ports, of course, but as R. H. Tawney remarks, "the fact that peasants are starving in Shansi or Kansu is not a reason why factory operatives should be sweated in Shanghai or Tientsin."<sup>15</sup> Professor Tawney writes of industrial conditions in Shanghai and elsewhere in China as follows:

If conclusions may be drawn from the inquiries hitherto carried out, it would seem reasonable to say that, with the exception of certain individual establishments, which have preserved a more intelligent policy, the conditions generally obtaining in factory employment recall those of the first, and worst, phase of the Industrial Revolution in England. Not only are hours preposterously long, and wages almost incredibly low, but part of the work is often done by relays of cheap and unpaid juvenile workers, sometimes imported from the country, and occasionally, it is alleged, actually sold to their employers, in shops which are frequently little better than barns, and in which the most elementary conditions of health and safety appear to be ignored. . . . To import Western industrial technique without importing Western methods of controlling it is to prepare a disaster.<sup>16</sup>

A stringent factory law was promulgated by the lawmakers at Nanking in December, 1929, but little has yet been done to put it into effect, even in part. In August, 1933, the Ministry of Industries set up a Central Bureau of Factory Inspection which

<sup>14</sup> These figures were compiled by the Ministry of Industries in 1930. H. G. W. Woodhead (ed.), *China Year Book, 1933* (Shanghai, 1933), pp. 362, 381.

<sup>15</sup> *Land and Labour in China* (New York, 1932), p. 143.

<sup>16</sup> *Ibid.*, pp. 149-150.

announced in April, 1934, a program for gradual enforcement of the law in five stages. Whatever the intentions of the National Government, it can do little without the coöperation of the authorities in the foreign-controlled areas, of which the International Settlement is industrially the most important. Thus factory control in Shanghai is complicated, not only by a tangle of legal jurisdictions, but also by the existence of three mutually independent municipalities, each with its own administrative prerogatives and traditions.

The International Settlement authorities were long apathetic toward factory abuses which the chairman of the Council himself referred to in 1932 as "little short of appalling." A municipal by-law proposing mild child labor regulation was twice rejected by the ratepayers in 1925. Six years later, the Council, spurred by the action of the National Government, endorsed factory regulation in principle. Following a holocaust in a local rubber factory in February, 1933, which cost the lives of eighty-one workers, an amendment to the by-laws was approved granting the Council the right to control factory conditions in the Settlement by a system of licensing. The Council has expressed willingness to coöperate with the Chinese in the concurrent adoption and enforcement of legislation. The Chinese authorities, however, have opposed this procedure, maintaining that the Settlement is Chinese territory, and that the control of industrial conditions, especially in Chinese factories, is *ultra vires* under the Land Regulations, the amendment of which requires Chinese approval. Sound economic policy, they insist, requires that the right of factory control in all areas be vested in the National Government. The Council, on the other hand, is determined to maintain its administrative integrity, and the licensing plan makes this possible. Months of protracted negotiations have failed to produce a compromise solution acceptable to all parties.

This question is akin to those of courts and taxation. Barring the complete abolition of foreign control of Shanghai, it poses the problem of developing a working relationship between the foreign and Chinese authorities in a matter which is of more than local concern. Chinese law might be enforced through the Chinese courts in the case of native factories in the Settlement. But foreign factory owners enjoying extraterritorial rights—notably British, Japanese, and Americans—are outside Chinese juris-

diction.<sup>17</sup> To demand that factory control wait upon the abolition of extraterritoriality, given any alternative solution, is to sacrifice the welfare of Shanghai labor in the interest of national prestige.

An alternative solution presents itself in the licensing scheme of the Council, assuming the good faith of that body. In the various courts of the Settlement, the Council proposes under its by-law to enforce a set of regulations paralleling the Chinese factory law as administered in Chinese areas. Such a device avoids the impasse over extraterritoriality and the administrative integrity of the Settlement. On the other hand, in a matter of national economic policy it puts veto power in the hands of a foreign-dominated local body closely affiliated with powerful employer groups. It may be observed, however, that at present the Nanking government is not itself militantly proletarian in character.

In the course of negotiations in 1933, the Chinese authorities modified their position and proposed a joint factory inspectorate responsible to a joint board over which the two administrations (or three, if the French authorities should agree) should have equal control. The Council, however, while willing to report systematically to the Ministry of Industries and to employ Chinese inspectors trained and nominated by the Ministry, refuses to limit its independence by acceding even to joint control in the Settlement. Their reluctance to recognize Chinese authority in the Settlement in matters of factory regulation, as well as taxation, is based in part on a strong suspicion, borne out by certain recent acts of the Nanking government, that such power would be used to discriminate against foreign business interests and in favor of Chinese. This is perhaps the greatest obstacle in the way of settlement. As in the case of the External Roads dispute, the factory problem unfortunately had not met with even a temporary solution prior to the outbreak of Sino-Japanese hostilities. Since 1931, the Nanking régime has obviously been in no position to force the issue, assuming that it so desired. Political uncertainty throughout China has brought procrastination on all sides. Meanwhile a minority of rapacious employers continue to set com-

<sup>17</sup> It has been suggested that foreign courts be empowered by suitable legislation to enforce the Chinese factory law. Whatever the merits of this scheme as a means of progressively abolishing extraterritoriality, it would probably involve long delay in instituting factory regulation, and could be sabotaged by one recalcitrant foreign Power.

petitive standards of cruel exploitation in the mills of Greater Shanghai—a situation for which the Treaty Powers as well as China must accept responsibility.

The Japanese attack on January 28, 1932, as already indicated, injected fresh complications into the problems of Shanghai. However much Chinese resented the use of the "neutral" Settlement as a base of attack by the Japanese forces, they were compelled to reflect upon the possibility of Japanese control as an unwelcome alternative to international rule. The foreign authorities found themselves in the awkward position of inviting the Japanese navy to defend its assigned sector (which included a piece of the Chinese municipality) and then being unable to prevent the Japanese forces either from usurping the authority of the Municipal Council in their defense area or from launching large-scale military operations into Chinese territory. Notwithstanding the bitterness engendered among Chinese by the enormous destruction of life and property, the Japanese by force of arms eventually created a neutralized zone around the city and reduced the strength of the organized boycott. The old "Free City" proposal of Taiping days was once more revived in certain quarters. If Japan had this in mind in suggesting a conference of the Powers to consider the protection of foreign interests at Shanghai and elsewhere in China, it was dropped when the Powers declined to participate in deliberations from which China was excluded.

Since the liquidation of the Shanghai venture, Tokyo has centered its positive policy north of the Yellow River. The Japanese community in Shanghai has been rebuilt, however, and is pressing for further representation in the Settlement administration. By conscientiously voting *en bloc*, the Japanese rate-payers, whose number is reported as approximately 800, wield an important influence in municipal affairs. The status of the Settlement being removed temporarily from the forefront of diplomatic issues in the Far East, affairs at Shanghai have tended to drift. Japanese aggression in the North has given Nanking more pressing problems to deal with and has produced a fundamental divergence in the policies of the Powers. Mr. Justice Feetham's proposals looking toward the ultimate reconstitution of the Settlement as a self-governing municipality under a charter from the National Government have been filed away in obscurity. In 1931, they failed to satisfy the Chinese; in 1934, the foreigners seem content to let

matters rest as they are. The economic and social plight of Shanghai's growing proletariat and the failure of the Settlement régime to cope with the numerous problems arising therefrom recall Professor Tawney's shrewd observation: "Political forces in China resemble Chinese rivers. The pressure on the dykes is enormous, but unseen; it is only when they burst that the strain is realized."<sup>18</sup> Politically and economically, the status of Shanghai is one of unstable equilibrium.

#### IV

There is a tendency to over-emphasize the international political aspects of Shanghai. Foreign control is likely to obscure the significant rôle being played by this treaty port in the *internal* drama of present-day China. In the long run, perhaps, the most significant change in the forces underlying political issues in Shanghai is the increasing participation of a growing community of Chinese in the foreign way of life. This westernizing tendency may be observed, for example, in occupational habits, whether those of the business man or factory worker, in economic and social organization, in political ideas, in domestic arrangements, and in standards of food, clothing, housing, and recreation. Especially pertinent for present consideration is the fact that Chinese business leadership is asserting itself in industry, commerce, and finance. The growing importance of Chinese banks and Chinese ownership of real estate in the foreign settlements testifies to the increasing predominance of Chinese capital, a tendency accentuated by the flight of capital from the interior. Without implying that inequality in wealth and economic power were unknown in traditional China, it may be noted that the introduction of capitalism in treaty port areas is producing large Chinese vested interests and the social groupings characteristic of capitalistic economies.

The rise of Chinese capitalism and a capitalist class has at least three effects on Shanghai politics. In the first place, the dominant position of the foreigner in business enterprise in China is being undermined. A parallel, although more threatening, development in Manchuria contributed a motive for Japan's conquest of that region. Foreign investments in Shanghai, however, are mainly non-political in origin. Here, at any rate, the growth of Chinese business interests does not reduce the economic stake of the Powers in China, but—to borrow Nathaniel Peffer's phrases—shifts it from "business in China" to "business with China." Consequently, the

<sup>18</sup> *Op. cit.*, p. 161.

national economic interests presumably pursued by the foreign Powers become less closely identified with the property interests of foreigners resident in treaty port centers like Shanghai.

Secondly, piecemeal modification of foreign control in the International Settlement as already undertaken is facilitated. The foreign authorities are less reluctant to share political control with a wealthy Chinese owner and employer class whose interests and attitudes have much in common with their own. It is also easier to coöperate with and to exert pressure upon a national or regional régime which depends for its survival upon the support of that class. On the other hand, recent boycotts show that the Chinese commercial classes can be highly nationalistic in temper as well, especially when native industries stand to profit from such an attitude. Many public-spirited Chinese, furthermore, while conceding the great value to China of foreign capital and technical assistance, are impressed with the bitter lessons experienced by their country in the dangerous political consequences of foreign investment.

Finally, industrialization and westernization in treaty port areas, by increasing the differentiation of social classes and geographic regions in China, raise a host of new domestic problems. This occupational and geographical specialization brings increasing interdependence and hence in certain respects is a unifying force. At the same time, it produces new antagonisms of class and region. The process is furthest advanced in Shanghai—"the spear-head thrust into China's flank by her latter-day barbarian invaders from overseas."<sup>119</sup> It creates issues of local and national economic policy which are settled by aimless drift in the absence of conscious control. What is to be the rate, location, and type of industrialization? Do political and economic considerations call for a large measure of self-sufficiency? What degree of regulation or ownership of industry is the state to undertake? Is *laissez-faire* capitalism to proceed unchecked in its rapid creation of large and congested slum areas in Shanghai? How are the financial resources of Shanghai to be put to the task of rural reconstruction? To what extent is national and regional governmental policy to reflect the interests of agrarian, wage-earner, or industrial capitalist classes? Domestic questions of this type are of paramount importance. Foreign control of Shanghai, prestige values aside, is significant mainly as it bears upon them. In this sense, we may say of Shanghai that the

<sup>119</sup> Arnold J. Toynbee, *Survey of International Affairs, 1931* (London, 1932), p. 460.

fact of primary importance is the rôle of the city as the great urban center of China; its foreign status is secondary.

The political evaluation of Shanghai in recent years brings these issues into clearer perspective. With Chinese business men co-operating more or less harmoniously with foreign *taipans* on the Municipal Council, and with the removal of racial discrimination in Settlement policy, political arrangements in Shanghai cease to be viewed solely as international disputes over treaty rights. Municipal taxation and expenditure, factory control, and national taxation, for example, become more obviously the battleground of social classes or of treaty port and hinterland. Treaty rights and national sovereignty may continue, however, to offer convenient camouflage for foreigner and Chinese alike. It is much simpler, of course, to conceive of the internal and external politics of Shanghai as a contest between two parties, China and the Powers. Such an interpretation is increasingly unreal.

The differentiation of class and region resulting from the impact of Western culture on the treaty port areas is a gradual process. So long as the laboring class of Shanghai is quiescent, and so long as a feeble Nationalist Government is closely allied with the commercial classes of the treaty ports, a frontal conflict directly involving Shanghai is unlikely. The rise of a strong proletarian or agrarian movement, however, or the emergence of an indigenous political movement rejecting the Western tendencies of the treaty ports, might develop a broad cleavage. There is no reason, moreover, to assume that the influence of Soviet Russia as it penetrates eastward across Asia is at an end. The possibilities of open conflict along these lines can be observed in the split in the Kuomintang in 1927 and the prolonged civil war which has ensued between Nanking and the Communists. In any such internal cleavage, Japan and the Western Powers (with the exception of Russia) would doubtless range themselves on the side of the treaty port capitalism. It has already been observed, however, that such an alliance is not altogether a secure one. Nor do the Powers themselves present a picture of harmonious co-operation at present. Shanghai, with its international controls and its interaction of Western and Chinese cultures, reveals these various tendencies at work during the past decade. Its politics, whether viewed internationally or domestically, is a manifestation of these underlying economic and social currents whose resultant force will shape the future of China.

## AMERICAN GOVERNMENT AND POLITICS

**Toward a Consistent Foreign Loan Policy.** The Securities Act of 1933 marks the inauguration for the United States of what seems to be a consistent policy toward private loans to foreign governments. In view of the continued importance of such loans in our foreign relations, it appears appropriate to consider in some detail how the new policy differs from the old, and what its implications are likely to be.

It is unnecessary in this journal to discuss the individual cases of friction arising from private loans to foreign governments during the last fifty years. What concerns us, rather, is the cause of such friction. *Immediate* causes were to be found sometimes in the encouragement by the State Department of American loans to particular governments; sometimes in intervention by the State Department in the interest of American creditors; sometimes in the establishment by the United States of extensive financial controls; or sometimes in the sending of armed expeditions to take over the control of customs houses to assure continued payment of foreign obligations. One underlying cause, however, was far more important than any one of these immediate causes, namely, the absence of a consistent policy toward American creditors of foreign governments. This, in turn, was due to the failure of those in authority (or perhaps of the American people themselves) to decide once and for all what the relation should be between our government and those of its citizens who were creditors of foreign governments. The failure to make this decision rendered it impossible to outline any broad and consistent policy which would have determined automatically the course of government action in particular instances.

Given the present world political system in which states are the only persons in international law, the government of the United States must, on occasion, represent its citizens through diplomatic channels, and it will therefore always take some interest in the welfare of foreign bondholders. It is, however, a major question of state policy to determine how great this interest shall be. There appear to be two broad alternatives. The government may decide to be actively interested in the financial transactions of its citizens and maintain a continuous and lasting supervision over all phases of the process. If this alternative is selected, it is conceivably the function of the federal government to advise investors as to the wisdom of loaning money to certain governments<sup>1</sup> and, in accordance with this advice, to assist investors in case of

<sup>1</sup> Senator Hiram Johnson at one time proposed that "a Foreign Loan Board, consisting of the Secretary of State, the Secretary of Commerce, and the governor

difficulties in securing payments. In some instances, government approval of a loan might be made dependent upon the establishment of a financial control by the United States similar to that created in Haiti.<sup>2</sup> This policy has the obvious advantage of permitting control over the making of loans, and thus of discouraging loans most likely to require intervention.

On the other hand, the government may decide, in the main, to leave the creditor citizen to his own devices and come to his assistance only in certain well defined situations. Under this alternative, creditors would not make loans on the assumption that assistance would be forthcoming in the event of default, and would therefore be more cautious. Intervention would be resorted to in only the most flagrant instances of denial of justice.

Whichever of these alternatives is selected, it should be adhered to consistently, for shifting from one to the other opens pitfalls which it is impossible for any government to avoid.

Even a casual acquaintance with our past foreign loan policy reveals that neither a policy of control nor one of *laissez-faire* was consistently followed. Due to constantly changing personnel in responsible positions, and to the fact that pressure brought to bear upon the State Department was conceived in terms of particular ends desired rather than in the interests of consistent policy, there was a marked inconsistency in the actions of the government. Thus, while in general the government pursued a policy of *laissez-faire* as to the circumstances and terms under which citizens invested their capital abroad, it often adopted a policy of intervention and control when these loans proved to be unsound.

This inconsistency in policy was of little consequence where loans were made to governments usually in the habit of meeting their obligations. However, it bore fruit in an ever-increasing international friction as the public indebtedness of less provident debtor governments (notably those in Central America and the Caribbean and some in South America) increased and the occasions for intervention by our State Department

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of the Federal Reserve Board, . . . should approve or disapprove of virtually all foreign loans." W. T. Winslow, "The Securities Bill and Foreign Investments," 236 *No. Amer. Rev.* (1933), 243-244.

<sup>2</sup> In contemplating the establishment of such controls, we must not be misled by the unhappy experience of the United States in its relations with some of the defaulting governments of Central America and the Caribbean. The financial controls established in these countries in the past have been unsatisfactory in some cases because expert personnel for the administration of controls was lacking; in other cases because financial conditions in the debtor countries had been allowed to go too far before the controls were established; or again, failure was due to the lack of a clear-cut, well-understood policy by the United States, so that intervention came only at the insistence of the creditors, and was looked upon as evidence of an imperialistic policy.

multiplied. It made inevitable the charge that financial chaos had been deliberately fomented by American bankers, and it lent plausibility to the belief that we were using the financial breakdown of the debtor countries as a means of extending our political control. Had the United States consistently pursued a policy of *laissez-faire* and refused from the start to come to the assistance of its creditor citizens, or had it consistently pursued a policy of control and supervised all phases of the creditor-debtor relationship, these results might have been avoided.

In what respects does the present policy of the United States appear to be different from that formerly pursued? The Securities Act of 1933<sup>3</sup> and the Administration's actions with respect to it laid the foundation for the present policy. Title 1 of the act aims to assure investors of a complete and accurate set of facts concerning any securities offered for sale. Foreign government bonds are specifically included among the securities covered by the act.

Title 2 of the act provides for the creation of a Corporation of Foreign Security-Holders "for the purpose of protecting, conserving and advancing the interests of the holders of foreign securities in default. . . ." This Corporation is to be controlled and managed by a board of directors of six members, appointed by the Federal Trade Commission; and the Reconstruction Finance Corporation is authorized to loan the Corporation not to exceed \$75,000. The powers of the board of directors are broad enough to permit it to carry out the general purposes of the Corporation, but the Corporation is enjoined (section 210) from acting or pretending to act for the Department of State or the United States government. The Corporation is to come into existence only upon issuance of an executive order by the President.

While Title 1 of the act merely assures the investor of an opportunity to secure facts upon which to base his own judgment and thus promises a *laissez faire* policy on the part of the government, Title 2 contemplates direct governmental participation in protecting the interests of investors by the creation of the Corporation of Foreign security-Holders. Had the Administration chosen to create the corporation in question, the effect would inevitably have been to associate the government closely with the collection of foreign bonds in default. While the act specifically denies the right of the proposed Corporation to represent the government of the United States, debtors as well as creditors very probably would have been led to believe that a real connection existed between the State Department and the Corporation. The Securities Act therefore embodied the same inconsistencies in policy that have heretofore prevailed. This fact was apparently recognized at the White House, for despite consider-

<sup>3</sup> Public Act No. 22, Seventy-third Congress (H. R. 5480):

able pressure from various sources, the President did not issue the order putting this part of the act into operation. On the contrary, efforts were directed toward creating a wholly private bondholders' protective corporation which should have no connection whatever with the government. The result of these efforts was the Foreign Bondholders' Protective Council, Inc.,<sup>4</sup> incorporated under the laws of the state of Maryland. The purpose of this Council is to protect American interests in connection with foreign bonds in default and to coördinate the efforts of various other American groups which are seeking the same end. It is a private agency, having no official connection with the United States government, and therefore differs materially from that contemplated under the Securities Act.

From its action, we may judge that the Administration has adopted a *laissez-faire* policy, and wishes to put the investor on his own responsibility in purchasing foreign bonds and in negotiations with debtor governments when complications arise. It may be argued that the requirements of Title I suggest some measure of control. However, this control is purely negative, and it applies equally to domestic and foreign securities. Investors may believe that they can rely upon registration of securities with the Federal Trade Commission for evidence as to their soundness, but a few years of experience should teach them the limits of federal supervision.<sup>5</sup>

Two further steps in the direction of a consistent *laissez-faire* policy have been taken. Both reduce the likelihood of forceful intervention for the protection of creditors. In his address before the Woodrow Wilson Society on December 28, 1933, President Roosevelt said that "the definite policy of the United States from now on is one opposed to armed intervention."<sup>6</sup> The words of the President were translated into an obligation of the United States in the Convention on Rights and Duties of States,<sup>7</sup> ratified by the Senate on June 15, 1934, and approved by the President on June 29, 1934. Article VIII of this Convention provides: "No state has the right to intervene in the internal or external affairs of another." Article XI provides that "the contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force,

<sup>4</sup> *N.Y. Times*, Oct. 20 and 21, 1933.

<sup>5</sup> Some aspects of this problem, as affecting both domestic and foreign securities, are discussed in Fred Rodell, "Regulation of Securities by the Federal Trade Commission," 43 *Yale Law Jour.*, pp. 272-280.

<sup>6</sup> Pamphlet containing the address published by the Woodrow Wilson Foundation (New York, 1934).

<sup>7</sup> Signed by the delegates to the Seventh International Conference of American States at Montevideo, December 26, 1933. Treaty Information Bulletin, No. 54, Mar., 1934, p. 33.

whether this consist in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever, even temporarily."

Summarizing the events of the last eighteen months, we see that through the Securities Act, the creation of the Foreign Bondholders' Protective Council, the President's address of December 28, and the Convention on Rights and Duties of States, the present Administration has (1) assured the investor of adequate information about his securities; (2) provided the investor with an agency other than the State Department through which to negotiate with debtor governments; (3) limited very sharply the need for granting diplomatic assistance; and (4) declared its opposition to a policy of armed assistance.

It is probably too early to frame any judgment as to the results of this foreign loan policy. Yet a few suggestions as to its probable significance in the field of international relations seem permissible.

(1) The general effect of the new policy should be to reduce to a minimum the irritation brought about by diplomatic intervention in behalf of creditor citizens. (The recent intervention of the State Department with the government of Germany in behalf of Dawes—and Young—loan creditors and the insistence of our government upon safeguarding treaty rights in connection with the evacuation of Haiti illustrate the degree and type of intervention likely to continue in the future.)

(2) The ending of armed intervention should mean more peaceful and forthright relations with Latin America in particular. The constant fear of landing expeditions and the suspicion that we were extending our hegemony in this hemisphere have stood in the way of effective coöperation. No one familiar with our past relations with debtor countries in the Caribbean and Central America will suppose that this change can be brought about over night. But the negotiations for the evacuation of Haiti and the ending of the Platt Amendment are evidence, at any rate, of good faith.

(3) Finally, this new approach may open the way to the development of some form of international organization to supervise loans to backward countries. As noted elsewhere,<sup>8</sup> the chief obstacle to the growth of such an institution in the past has been the sense of obligation on the part of sovereign states to go to any lengths to assist creditor citizens. The gesture here made by the United States may well lead to the adoption of similar policies by other states. There may then follow the creation of

<sup>8</sup> See my article, "National and International Control of Foreign Investments," in this REVIEW, Aug., 1931.

an international organization to operate controls and supervision over defaulting or less provident states.

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**The Control of Patents in Private and Public Services.** Policies of large corporations relating to the control of patents taken out by employees naturally vary in detail with the different companies. Certain general policies, however, are usually followed.<sup>1</sup>

Some companies place no restrictions upon the taking out of patents by their employees, but as a general rule they retain the shop right to manufacture for themselves any articles which they can use. These companies pay the cost of securing the patent for the employee, and the patent is taken out in his name. The company allows the employee to sell the patent to any one he chooses, but he grants to his company the right to use the idea.

The great corporations which maintain large research laboratories take definite steps to control all inventions and discoveries made by their employees. At the time of employment, the situation is carefully discussed and it is clearly explained that since the individual is employed for research work, all product of that work is considered property of the company. Many corporations embody this in a written contract signed with the employee at the time of employment. As a general rule, the sum of one dollar is paid to the employee for each process or discovery patented. Corporations very seldom pay royalties to employees, but when an advancement or promotion or increase in salary is considered, the number and value of patents of the employee will be a determining factor. Many instances arise in which the discovery of the employee does not fall within the field of activity of the corporation. In a case of this nature, the majority of corporations release all rights to the invention, leaving the individual free to take any steps he desires in connection with it.

Some cases have arisen in which an employee has left the service of a corporation, and then has attempted to secure a patent on an invention or discovery made during his time of employment. Corporations protect themselves against such practice by several means. As a general rule, the contract signed between the individual and the corporation at the time of employment provides that the corporation shall have title to any patent secured by the employee within six months after leaving the corporation's service. Some contracts extend the terms of the provision to two years. This applies, of course, to those patents relating to the

<sup>1</sup> Information on private services was secured largely by correspondence. For obvious reasons, the names of corporations are not given.

work performed by the corporation. In the next place, corporations employ patent attorneys who handle all patent matters. When a discovery is made on which a patent might be secured, the employee or his chief immediately notifies the patent attorney. Thus, the matter is taken out of the hands of the employee. Also, the employee, while doing his research, will keep memoranda concerning his work. If he should attempt to patent any process or discovery after he leaves the employ of the company, the corporation will have tangible evidence that it really has claim to the title. A particular case was brought to the attention of the writer in which a certain manufacturing company in a Western city depends for its existence entirely upon the manufacture of articles patented by the head of the company as the result of research done in the laboratory of another corporation. The latter company uses the articles it desires without payment of royalties, and in case it wishes to buy the articles from the manufacturing company headed by its former employee, it can do so at a preferential price.

The securing of patents and copyrights by employees of private and independent colleges, universities, and similar institutions would likewise come within the category under discussion. So far as the writer can learn, there is no control by such institutions over the patents and copyrights secured by their employees. This question has been discussed by the administration and faculty of some of the large institutions, but it appears that there is no attempt to control the patents or copyrights secured.

Only three states have taken any steps to control the patents of their employees, i.e., Wisconsin, Ohio, and Iowa.

Wisconsin has taken no definite legal action, and there is no official attempt to control patents of employees. However, an organization has been developed at the state university which is interested in inventions and discoveries made at that institution. This organization can best be described by quoting from its first report to the board of regents.<sup>2</sup> "The plan under which the Foundation was organized was presented to the April meeting of the board of regents in 1925, and upon approval by the board, a corporation known as the Wisconsin Alumni Research Foundation was incorporated November 14 of that year. To quote from the charter of that organization, its purpose is: 'To promote, encourage, and aid scientific investigation and research at the University and to assist in providing means and machinery by which the scientific discoveries and inventions of the staff may be developed and patented and the public and commercial uses thereof determined; and by which such utilization may be made of such discoveries and inventions and patent

<sup>2</sup> Report of the Trustees of the Wisconsin Alumni Research Foundation to the Board of Regents of the University of Wisconsin, June 22, 1931, p. 1.

rights as may tend to stimulate and promote and provide funds for further scientific investigation and research within said University'." This is a non-profit organization. "Patentable discoveries by various professors and students of the University are treated as their own property unless the funds for the research project are derived from some private source and some particular arrangement concerning this phase is designated beforehand. All patents turned over to the Foundation are assigned to us so that we may exercise complete control over their commercial development. The patentee is given fifteen per cent of the net avails from the income. . . . All of our funds derived from patents are used for the furtherance of research."<sup>3</sup>

Ohio has a statute enactment which applies to the discoveries and processes developed at the engineering school of the state university.<sup>4</sup> One of the functions of the engineering school is to carry on research in coöperation with the business houses of the state. Any state corporation has the privilege of utilizing the research department of the engineering school to carry out certain studies. Any patents which result from the research are to be taken out in the name of the university, even though the cost is paid for by the individual company. However, the university, through its board of trustees, has the power to sign contracts stipulating that the company get the results of any discovery. In the absence of a contract, the patent automatically goes to the university.

Iowa has gone much farther than any other state in the control of patents. This control applies to discoveries, inventions, and copyrights of students, instructors, and officials of institutions of the state. An act passed in the special session of the general assembly this year gave the board of education the power to take over all patents or copyrights secured by students, instructors, or officials of the state, with the consent of the inventor and at the discretion of the board.<sup>5</sup> The board may incur all necessary expenditures for securing the patent or copyright, which then becomes the property of the state of Iowa. Royalties and earnings are credited to the funds of the institution in which the patent or copyright originated.

The control of patents in the domain of the national government is a departmental matter. In order to develop uniformity in the manner of handling inventions and patents in the various government departments and independent establishments, and in the respective rights and advantages of the government and its employee-inventors, an inter-departmental patents board was created in 1922 and attached to the

<sup>3</sup> Letter from the director of the Foundation to the writer. For some of the earlier accomplishments of this Foundation, see W. S. Kies, "Science Goes to Market," *Review of Reviews* (September, 1931), p. 42.

<sup>4</sup> Sections 7961-65, General Code of Ohio.

<sup>5</sup> House File No. 209, an amendment to section 3921 of Code of 1931.

office of the Chief Coördinator of the Bureau of the Budget.<sup>6</sup> The board's function was to advise the Chief Coördinator on matters pertaining to patents owned by the government and to inventions made and patents secured by persons in government service relating to devices, apparatus, methods, or processes in the use or development of which the government was interested. One of the main activities of the Board was the consideration and preparation of a measure to be proposed to the Congress to provide for uniformity in the control of patents in the several departments. However, when the Federal Coördinating Office was abolished in 1933,<sup>7</sup> the interdepartmental Patents Board went with it, and no congressional action was taken which would give the national government a uniform system of control of patents.

The Department of Agriculture furnishes a good example of the departmental control of patents. This department controls the patents of its employees by administrative regulations which provide that any employee making a discovery shall report the same to his chief of bureau, who in turn reports to the secretary. Determination will then be made as to what measure of control, if any, the Department should have or exercise in the patenting and subsequent administration of such discovery or invention.<sup>8</sup> If the invention is outside the scope of the employment of the individual, he may apply for a patent through the Department without the payment of a patent office fee. The government, however, receives the right of free use of the invention.

Thus it will be seen there is a definite control of patents by the national government and by private industries. In the national government, the control is by departmental regulations, whereas in private industries it is by contractual arrangement. The broad general policies are similar. The control exercised applies to patents within the field of employment of the individual, but does not apply to patents secured outside this field. However, there may be a shop right to the idea when the individual secures his own patent. This is true both in the national government and in private corporations. The states, with the exception of Ohio and Iowa, have taken no official action to control patents. Control in Ohio is nominal and applies only to the engineering school of the state university. Iowa has taken a definite step toward control of patents, but the legislation was of the "emergency" variety and may or may not represent a permanent policy.

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<sup>6</sup> Executive Order No. 3721, August 9, 1922.

<sup>7</sup> Executive Order No. 6166, June 10, 1933.

<sup>8</sup> *Administrative Regulations of the Department of Agriculture*, Paragraphs 686 and 687.

## LEGISLATIVE NOTES AND REVIEWS

**Judicial Interpretation of the Executive Veto in Michigan.** The convention which assembled in the territory to draft a constitution for the proposed state of Michigan<sup>1</sup> adopted without opposition a modified executive veto. The provision was a verbatim copy of Article I, section 12, of the New York constitution of 1821,<sup>2</sup> with a stipulation appended expressly extending the veto to "every resolution to which the concurrence of the senate and house of representatives may be necessary."<sup>3</sup> These provisions, with three changes, were readopted in the revision of 1850. The first change, although partially one of arrangement, recognized a distinction between joint and concurrent resolutions, excluded the former from the scope of executive interference, and consolidated the two sections into a concise statement of the veto power.<sup>4</sup>

The other two alterations were of greater importance. In 1850, in all of the states except Louisiana, the veto could be overridden, upon reconsideration in each of the two houses, by one of three methods: (1) a simple majority vote, (2) a majority of all members *elected*, or (3) a two-thirds majority of all *present*. The third was the Massachusetts and New York rule which had been adopted in Michigan in 1835. Because of the unfortunate management of the financial affairs of the young state—attributable in part to the unwillingness of the legislature to accept the advice of the governor—the second convention abandoned the New York rule and adopted the Louisiana practice, which required, to overcome executive disapproval, affirmative action of two-thirds of all the members elected to each house.<sup>5</sup>

The third change, in extending the time in which the veto might be exercised beyond legislative adjournment, gave the governor more opportunity to consider the merits of legislation enacted in the final days of the session. The revised constitution provided: "The governor may approve, sign, and file in the office of the secretary of state, within five days after the adjournment of the legislature, any bill passed during the last five days of the session, and the same shall become a law."<sup>6</sup>

The principal provisions of the constitution of 1850 were readopted in 1908 and remain as the basis of the general veto power in the state.

<sup>1</sup> May 11, 1835.

<sup>2</sup> *Michigan Const.*, 1835, Art. IV, sec. 16.

<sup>3</sup> *Ibid.*, Art. IV, sec. 17. Cf. *Missouri Const.*, 1820, Art. IV, sec. 11.

<sup>4</sup> *Michigan Const.*, 1850, Art. IV, sec. 14.

<sup>5</sup> *Loc. cit.*

<sup>6</sup> *Loc. cit.* The Michigan constitution was the first to carry this provision. J. A. Fairlie, "The Veto Power of the Governor," in this REVIEW, Vol. 11, p. 479 (Aug., 1917).

The revision of 1908 produced one important addition, i.e., a provision authorizing the governor "to disapprove of any item or items of any bill making appropriations of money embracing distinct items."<sup>7</sup>

Neither the unquestioned incorporation of the original veto provision nor the series of subsequent alterations was indicative of the provision's potentialities as an instrument of legislation. The plan of government framed by the convention of 1835 anticipated that the determination of state policy would be reserved exclusively to the senate and house of representatives; and, although executive approval was required for all legislation, there was no intention that the governor be authorized to nullify the clear intent of a majority of the members of the two houses. The veto was regarded as a proper check upon legislative abuses, but was not designed to make him an integral part of the legislative branch. It was then an executive rather than a legislative power, to be exercised only in exceptional cases or in unusual circumstances.

This conception of the veto power prevailed in practice as well as in theory through the early years of statehood. Before the close of the nineteenth century, however, in order to curb increasing legislative abuses, the governors were compelled to abandon this narrow interpretation of their power and seized upon the veto as an instrument for the determination of state policy. In eighty per cent of all vetoes since 1909, the governors have justified their negatives in terms of public policy and expediency. Although public approval of this broader use of the veto and legislative acquiescence in ultimate executive control have thoroughly established the governor as a component part of the legislative branch of government,<sup>8</sup> his constitutional status remains essentially executive. Consequently, under the traditional doctrine of the separation of powers, he is restrained from exercising functions other than executive except in such cases as are expressly authorized in the constitution.<sup>9</sup> "The veto is a legislative function," said the supreme court, "although it is not affirmative and creative, but is strictly negative and destructive. It cannot be exercised by the executive except through constitutional grant.... This historical and constitutional division of the powers of government forbids the intrusion, otherwise than by explicit language or necessary implication, of the powers of one department to another."<sup>10</sup> Because of

<sup>7</sup> *Michigan Const.*, 1908, Art. V, sec. 37.

<sup>8</sup> Less than three per cent of all bills vetoed since 1909 have become law contrary to executive disapproval and less than ten per cent have been proposed for reconsideration.

<sup>9</sup> "The powers of government are divided into three departments: the legislative, executive, and judicial. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution." *Michigan Const.*, 1909, Art. IV.

<sup>10</sup> *Wood v. State Administrative Board*, 255 Mich. 224 (1931).

this lingering faith in the doctrine of separation, the court has felt constrained to interpret the language of this grant of power as restrictive in character; yet in only one instance, the item veto, has the legislative position of the governor been weakened through judicial construction.

Several cases involving the veto power reached the supreme court during the nineteenth century, but a direct question requiring judicial determination did not arise until 1895. In that year the court was called upon to determine the extent of the governor's authority to approve of legislation subsequent to adjournment of the session. Since the validity of the veto was generally attributed to the presence of the legislative body prior to 1850,<sup>11</sup> Michigan governors had followed the then settled custom of signing scores of bills in the closing hours of the session. This practice, which demanded executive action without time for adequate consideration, threatened to defeat the purpose of the veto. A partial remedy was effected in the revision of 1850, when the governor was specifically granted a period of five days after adjournment in which to approve "any bill passed during the last five days of the session."<sup>12</sup> For nearly half a century, this provision was interpreted in strict accordance with the language of the grant. "Governors and legislatures were careful to see that all bills and joint resolutions which were passed before the last five days were disposed of, by approval or otherwise, before final adjournment."<sup>13</sup> In fact, after 1873 the legislature remained in session for three or four days for this purpose; in all, not more than three measures enacted before the last five days, and these, the result of oversight, were given executive approval after the close of the session. This narrow construction was supported in an opinion of the attorney-general in 1895, but was overruled by the supreme court later in the same year. In reaching its conclusion, the court refused to consider the provision apart from its context and held that the convention had intended that "all bills were to be signed within ten days after passage, except those passed during the last five days, which were to be disposed of within five

<sup>11</sup> See *Opinions of the Attorney-General*, Michigan, 1895, pp. 275-276. This report is based upon a California court opinion. "In approving a law, he [the governor] is not supposed to act in the capacity of the executive magistrate of the state, whose duty it is to see that the laws are properly executed, but as a part of the legislative branch of the government. This power is a *unit*, though distributed; and the parts can only act in unison. Whenever a part ceases to act, the whole becomes imperative." *Fowler v. Pierce*, 2 Cal. 165. However, the Michigan court intimated that it would not have followed the California opinion had it been presented with a similar question. "If we were construing the provisions of the earlier constitution, we should therefore feel justified in concluding that the governor might sign a bill within ten days after its passage, though the legislature should have meantime adjourned." *City of Detroit v. Chapin*, 108 Mich. 138 (1895).

<sup>12</sup> *Michigan Const.*, 1850, Art. IV, sec. 14.

<sup>13</sup> *City of Detroit v. Chapin*, 108 Mich. 136 (1895).

days after adjournment."<sup>14</sup> This interpretation afforded the governor ample time for the consideration of all bills enacted prior to the final five days of the session, but did nothing to extend the period for consideration subsequent to adjournment.

Since a large part of the entire program reaches the governor on the final days of the session, the limited period after adjournment in which approval may be granted is inadequate for executive consideration. As the result of a legislative practice instituted early in the present century, the governor is now allowed a period of from two to three weeks in which to dispose of the measures enacted by the houses. The legislature, upon completion of its program, sets a date for final adjournment and adjourns temporarily. In the interim, legislative details are supervised by the secretary of the senate and the clerk of the house, who are authorized to present for executive approval the bills passed in the closing days of the session. These measures are presented at intervals during the recess period but early enough to insure that all bills will reach the governor at least ten days prior to the date of final adjournment. This practice has greatly improved the legislative process in that the period for executive consideration has been extended, the governor is compelled actively to veto all measures of which he disapproves, and the legislature is assured an opportunity to reconsider all vetoed measures. However, the practice raised for judicial determination a rather fine point in constitutional construction.

The constitution provides that "if any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevent its return, in which case it shall not become a law."<sup>15</sup> This provision afforded no difficulties prior to the advent of the practice of temporary adjournment. If the executive, with the legislature in session, failed to return a bill to the house of origin, within the specified period, the same became law; and, as a matter of political expediency, objectionable measures were frequently allowed to become law in this manner. But if the return were prevented by adjournment (*adjournment sine die*), the bill was definitely defeated. Thus, the governor was able to disclaim responsibility through inaction. Neither of these practices has prevailed in Michigan since the adoption of the present constitution, and there is little possibility that either practice will be revived;<sup>16</sup> in fact, in view of existing circumstances, the governor is definitely precluded from exercising the pocket veto.

<sup>14</sup> *Ibid.*, pp. 141-142.

<sup>15</sup> *Michigan Const.*, 1908, Art. V, sec. 36.

<sup>16</sup> Three measures have become law without executive approval: Governor Ferris refused to take definite action on two occasions, and another bill was declared to

There are reasons to believe that the practice of temporary adjournment, supported by a strict, but perhaps rather unusual, construction of another clause of the provision, might seriously have interfered with the legislative authority of the executive. The constitution requires the governor to return, with his objections, all vetoed measures to the house of origin; but since ninety per cent of all negatives come at a time when the houses are not in session, a strict adherence to this provision is physically impossible.<sup>17</sup> Failure to comply with this procedural requirement is fatal; a measure is deemed not to have been vetoed until actually returned to the house of origin.<sup>18</sup> Since the pocket veto is operative only after adjournment *sine die*, and if temporary adjournments prevented the actual return of objectionable measures as prescribed by the constitution, then every attempted veto could be defeated by the simple expediency of temporary adjournment by the originating house.<sup>19</sup>

This important question was before the supreme court in 1931. The court ruled that, to make the veto effective, disapproved measures must actually be returned to the house of origin within the prescribed time. But, fortunately, the justices refused to recognize any possible legal consequences of temporary adjournment and held that the "return of a bill may be made to a house although it is not in actual session."<sup>20</sup> This construction is necessary, the court said, "to render the constitutional plan complete in operation and prevent uncertainty and confusion as to the important question of when a bill becomes a law."

No procedural difficulties are introduced as a result of this interpretation. The constitution provides for one regular session of each legislature, at the beginning of which the houses are completely organized, and this organization remains, by legislative practice, unchanged until the time of final adjournment. Thus "temporary adjournments do not disrupt or interrupt the legislature or an organized house. Each constitutes an organized entity throughout the session. So the governor may transmit the bill to the originating house through its officers, and thus unequivocally evidence his disapproval."<sup>21</sup> Nor does this construction limit or abridge

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have become law when Governor Sleeper's intended veto came one day late. Since 1909, only two governors have "pocketed" measures.

<sup>17</sup> Only ten per cent of bills disapproved between 1909 and 1934 were vetoed during the working days of the legislative sessions. All others came on the final day or in the interim between temporary and final adjournments.

<sup>18</sup> *Opinions of the Attorney-General*, Michigan, 1911, pp. 283-284. "An essential element of a veto is that the governor 'shall return it with his objections to the house in which it originated.' " *Wood v. Administrative Board*, 255 Mich. 230.

<sup>19</sup> "Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may then be in session." *Michigan Const.*, Art. V, sec. 18.

<sup>20</sup> *Wood v. State Administrative Board*, 255 Mich. 231.

<sup>21</sup> *Loc. cit.*

the constitutional rights of the legislature to accept ultimate responsibility, as that body retains its jurisdiction throughout the period of temporary adjournment to override the executive veto. This reasoning of the court is valid in any case, whether the temporary adjournment be that of the originating house only or of both houses. The constitution recognizes no legal consequences from adjournment other than adjournment *sine die*; and, in fact, the language of that document supports the view that the legislature may adjourn only without day.

In reaching these conclusions, the court rejected the doctrine of the Okanogan case<sup>22</sup> as inapplicable under these circumstances, because "we cannot hold that the originating house may destroy the executive power of veto by preventing return through its adjournment." The adoption of any point of view other than that expressed by the Michigan court would have given rise to a situation not contemplated by the constitution. The opinion reads, in part:

"The purpose and object of the constitution justifies, and, in our opinion requires, the construction that it is only adjournment without day of the legislature which prevents return of a bill to the originating house and calls into operation the provision for 'pocket veto.' It will be conceded that the constitution intends to preserve such powers of the governor [veto and pocket veto] without possibility of abridgement by the legislature; and further, that it purports to declare the affect, in each instance and without exception, of the failure of the governor to exercise the power of active veto within the stated time and of the action of the legislature in preventing an opportunity for active veto by adjournment. . . . Return of a bill on veto is not merely a matter of ceremony between executive and legislative branches of the government. It is an act of the executive (a) unequivocally to evidence his disapproval of the bill, and thereby (b) to confer jurisdiction on the legislature to make the bill a law in spite of his disapproval. . . . The provision that a bill shall finally fail if the legislature, by adjournment, prevent such return is, in practical effect, a sort of penalty imposed upon the legislature for depriving the governor of the power of active veto. Where the adjournment is one which neither prevents the act of return nor requires the imposition of the penalty, the provision is not applicable."<sup>23</sup>

The first legislature to assemble under the present constitution re-

<sup>22</sup> *Okanogan Indians v. United States*, 279 U.S. 655. The gist of the opinion is: "It follows, in our opinion, that under the constitutional mandate it [the vetoed measure] is to be returned to the 'house' when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the house when it is not in session as a collective body and its members are dispersed" (p. 683).

<sup>23</sup> *Wood v. Administrative Board*, 255 Mich. 229-232.

quested an opinion from the attorney-general concerning the obligations imposed upon that body to itemize appropriation bills. In answering the inquiry, that official said: "While this provision [the item veto] does not in express terms impose upon the legislature the duty to separate the different items in appropriation bills, it certainly was contemplated by that provision that the legislature should so frame those bills that it will be possible for the governor to exercise the constitutional power conferred upon him. . . . If the legislature does not see fit so to itemize the appropriation bills passed by it, I do not know that there is any remedy."<sup>24</sup>

However well intentioned the legislature may have been in seeking this advice, the fact remains that it has been remiss in the drafting of appropriation bills. Consequently, in order to effect an economy program, Governor Osborn (in 1911) interpreted the provision as conferring upon the executive constitutional authority to reduce items as well as power to strike items from appropriation measures. This interpretation of the item veto was not at once challenged, and the practice of scaling down was continued until 1931, when the issue was raised for judicial determination.<sup>25</sup> Several questions were certified to the supreme court: (1) Can the governor reduce specific items in an appropriation bill?; (2) If the court holds that the governor cannot reduce items, then the following questions are to be decided: (a) Is such an attempted partial veto of specific items a nullity, or (b) Does it veto those items, or (c) The tax clause not being correspondingly reduced, does it invalidate the whole appropriation bill?"<sup>26</sup>

Basing its opinion upon the doctrine of strict construction discussed above, the court answered the first question in the negative. "The language of section 37 [the item veto] must be read with all intensions against enlargement beyond its plain words. In this state, the general veto power never has included, and does not include, the authority to modify a bill or disapprove it in part. . . . The power of the governor under it [sec. 37], like the general veto power, is to approve or disapprove. Neither the language of the section nor its purpose carries necessary implication of power to reduce an item in amount, nor, in the ordinary use of the words, would such a construction be justified."<sup>27</sup>

<sup>24</sup> *Opinions of the Attorney-General*, Michigan, 1909, pp. 123-125.

<sup>25</sup> So generally accepted was this practice that the governors did not even go to the trouble of returning partially vetoed bills to the houses for reconsideration. Such bills were filed, along with approved measures, in the office of the secretary of state and appropriations made accordingly.

<sup>26</sup> *Wood v. State Administrative Board*, 255 Mich. 225-226.

<sup>27</sup> *Ibid.*, p. 225. The court accepted as ruling authority: *Strong v. People, ex rel. Curran*, 74 Cal. 283; *Fairfield v. Foster*, 25 Ariz. 146; *Fergus v. Russel*, 270 Ill. 304; *Peebly v. Childers*, 95 Okla. 40; *Mills v. Porter*, 69 Mont. 325; *Fulmore v. Lane*, 104 Tex. 499; and dismissed *Commonwealth v. Barnett*, 199 Pa. 161, with the

Having thus declared that the authority of the governor under the item veto did not extend to the reduction of items in appropriation bills, the court quickly disposed of the second question: "Under the facts here, the action of the governor in reducing the items, being without warrant of constitutional power, was a complete nullity and did not affect the bill in any way, either as an approval or disapproval of any such items. But had the bill been returned to the originating house with such reductions, it would have constituted a veto of the objected items."<sup>28</sup>

In holding that the governor had exceeded his constitutional authority in reducing items in appropriation bills, the court in effect nullified the item veto. Since the governors were forced to resort to this practice through the refusal of the legislature to itemize their appropriations, the executive will no longer be able to curb extravagant expenditures as contemplated under the constitution.

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statement that the opinion "has been sufficiently criticized by the other courts, sometimes under the guise of distinguishing it, to render unnecessary a statement of further reasons for not accepting it." *Loc. cit.*

<sup>28</sup> *Ibid.*, p. 226.

## PUBLIC ADMINISTRATION

**Early Administrative Phases of a State Liquor Store System.** New Hampshire is the eleventh state to establish a system of state liquor stores. Other states may try the same solution of their liquor problem when legislatures meet in 1935. What are some of the initial administrative problems encountered in organization and operation of state liquor stores?

Before answering this question on the basis of New Hampshire's experience, it will be well to examine the political and legal background of the liquor situation in this state. New Hampshire was one of the so-called "drier" states. It had sampled a modified state prohibition in the latter half of the nineteenth century, liberalized this through licensing in the first part of the present century, and finally returned to prohibition before national prohibition was adopted. The state appeared reasonably well satisfied with prohibition until the national tide turned so strongly against it about 1930. By 1933, the legislature reflected this change in the passage of a beer law, provision for a vote on repeal of the Eighteenth Amendment, and favorable action in the lower house for the establishment of a state retail system. The senate, however, did not act on the latter proposition. A few months later, the electorate of the state voted in favor of national repeal. From then on, agitation increased for some system of legalized hard-liquor sale. This was stimulated by legalization in neighboring states. Finally, in February, 1934, Governor Winant appointed a committee of twenty-one prominent citizens to study the liquor problem. Several weeks later this committee reported in favor of a state liquor store law. A special session of the legislature was called, and after discussion a bill embodying most of the recommendations of the governor's committee was passed and became law on June 5, 1934.

The framers and backers of this law appear to have had these objects in mind: (1) the satisfaction of a normal, unstimulated demand for liquor; (2) the destruction of bootlegging; (3) temperate use of the lighter liquors; (4) a modest revenue for the state; and (5) the elimination of politics from the liquor business.

Briefly, the law provides that the manufacture, sale, and transportation of alcoholic liquor shall be under the control of an appointed state commission, the commission to control the licensing of on- and off-premise sale of alcoholic beverages under six per cent as in the beer law of 1933. State stores are the exclusive agencies for the sale of off-premise liquor, although medicinal liquors obtained from the Commission may be sold by licensed druggists under a prescription system. First-class licensed hotels can sell liquor by the glass with meals and in guest rooms. Ac-

credited licensed clubs may sell by the glass to members for convenience only, and not for profit. Liquor and beer advertising is restricted. Towns and cities may adopt local option, subject to the right of the Commission to grant first-class hotel licenses anywhere in the state.

On the whole, the law provides ample power for administrative authorities. Primary enforcement responsibility is placed on the Commission, where it should be. Wide discretionary power is conferred on the Commission to make regulations, establish stores, grant licenses, and provide for carrying out the law.

However, there are some weaknesses in the law from the standpoint of sound administrative principles. It provides for an administrative commission of three who shall give full time and be paid \$4,000 each per annum. A large minority of Governor Winant's committee had pointed out the advisability of setting up a commission as a board of directors with the duty of hearing appeals, passing general regulations, and choosing a general manager to administer the law. It was pointed out that this plan would give a commission duties for which it is best fitted, that it would fix responsibility for appointments and efficient operation, and that it would be the best way to divorce liquor sales from politics. However, weighed against this is the possibility of a poor manager and danger that a commission might not appreciate its proper limits and duties. Under the present personnel of the Commission, and during the short period of trial, the administrative commission has worked satisfactorily. Time may throw a clearer light on this.

A more pronounced defect is the provision that terms of commissioners shall be three years. The governor's committee had proposed a six-year term. A longer term would certainly insure greater independence from political pressure, the possibility of attracting better men, and a more efficient performance of duties.

Another defect is the requirement that any sales agent shall have been a resident of the city or town where the store is established for at least six months prior to appointment. This has a narrowing influence in the choice of the best personnel. Since the sales agents must be law enforcers as well as agents, it is debatable whether partiality to some customers may not outweigh the value of familiarity with the community.

*Initial Steps of Organization and Operation.* The commission of three was appointed on June 13, although formal organization did not take place for almost a week. The chairman had been chairman of the beer control board. He had been secretary to Governor Winant, chairman of the Republican state committee, and a former state senator. His experience proved invaluable in the period of organization and in preventing false steps that might alienate legislative support. Prior to assuming the chairmanship of the Commission, he resigned the Republican committee

chairmanship, thus setting an example for subordinates. A second member had been associated for several years with the executive of the Amoskeag Paper Company of Manchester. He contributed valuable business experience. While he is a Democrat, he has never been active in politics. A third member, a recently retired dean of Dartmouth College, resigned eleven days after appointment. The position had not been filled by the middle of November.

No sooner had the Commission been organized than the governor sent the first two commissioners to Pennsylvania, where the state store system had been longest in operation, and to Virginia, which was just in the period of initial organization. There is little doubt that this tour of observation was extremely valuable in acquainting the commissioners with the problems and mistakes of other states, and it was of additional value in giving the commissioners an opportunity to understand each other before they were buried in administrative details. They returned with the belief that the Commission had to work as a unit if the plan was to succeed.

During the period while the two commissioners were away, things were in a state of disorganization. The remaining commissioner had resigned. The big hotel men were demanding immediate shipments of liquor because the tourist hotel season in New Hampshire is short. Hundreds of applicants for jobs with the Commission were anxious to press their claims, scores of salesmen with brands of liquor and types of equipment jammed the corridors, and the mail was staggering. To handle all this, there were four office girls.

About the time the commissioners returned, two temporary appointments were made that helped to relieve pressure. One man with experience in personnel work was made personnel officer and adviser of the Commission.<sup>1</sup> All applicants and applications for positions were handled through his office. The second man was an expert in administration who acted as an executive secretary to the chairman. It was this man's business to advise on matters of general administration, make out the agenda, and handle people and problems assigned to him by the chairman. The most immediate matter before the commissioners was the ordering of liquor for the larger hotels. Red tape was cut, temporary licenses were issued immediately, and within forty-eight hours the temporary needs were filled.

While the Commission was tackling the problem of constructing a new system, it was necessary to administer beer licensing. Then there were politicians and others who wasted plenty of the commissioners' time by demanding the immediate establishment of the stores. But this could not

<sup>1</sup> The appointee was the author of this article. *Man. Ed.*

be done in a few days, as the following discussion of particular administrative problems will show.

*The System of Distribution.* Temporary storage quarters for incoming liquor had to be established immediately, because all liquor for the hotels had to be purchased from the Commission. Arrangements were entered into for a warehouse in Concord, the most centrally located city in the state. In a short time the building was in shape. New Hampshire is a small state, and the probable number of stores was so small that one warehouse will probably continue to be sufficient. It was decided after investigation into the cost of buying and operating trucks that it would be cheaper to distribute by contract with a private trucking company. This was done on the basis of competitive bids. The plan has worked well so far.

*Choice of Brands.* This was a task that was pressing as well as difficult. Because of the experience of one of the states which they had visited, the commissioners were apprehensive lest some mistake be made in selecting brands. They tried to see as many reliable salesmen as possible. This was time-consuming, although the commissioners believe it well worth while. Well known and reliable brands were finally selected. An attempt was made to have a wide price range and a reasonably large number of brands. The state was fortunate in having a buyer's market when it went into the business, in contrast to some of the states which started their store systems in the post-repeal scarcity.

*Financial Policy.* The law reads that the price of liquor sold by the state shall "be sufficient to pay for the cost of the liquor purchased, plus a proportionate part of the overhead expense of the Commission, plus an additional charge; all to be determined by the Commission." It is the policy of the Commission to keep the retail price down to the point at which it is hoped to destroy the bootlegger's trade. At present, the retail price is below that in near-by states having private sale and is on a par with prices charged by the Vermont state stores. Of course it is expected to make a profit, which will be transferred to a special state debt retirement fund.

As soon as the first stores were established, the Commission instituted an inventory and accounting system whereby each store reports daily to the Concord office sales and stock on hand. Each store must have its goods inventoried at the close of the day, because the manager does not know when the traveling auditor will inspect the books. The store manager sends his orders for additional supplies through the central office. The warehouse has a daily check on all incoming and outgoing liquor according to brands.

The Commission has from the first adopted the cash basis of payment to firms from which it purchases. This gives the state any advantage

which accrues from discounts. The legislature appropriated an operating fund of not to exceed \$250,000 for initial expenses. This will be repaid within a short time.

*Store Sites.* Everyone with a vacant store site wanted to bring it to the attention of the Commission. Had this been possible, no end of time would have been consumed listening to applicants and to their political friends. To head off such a situation, the Commission appointed a real estate expert to pass on and investigate applications. His preliminary investigations were carried out quietly and thoroughly. From the few best locations in each town, the commissioners personally made the selection. Central locations conforming to the statutory requirement that no store should be located within three hundred feet of a church or school were selected. The state was fortunate, thanks to prevailing conditions, in obtaining suitable locations at very low rentals.

*Store Equipment and Arrangement.* The equipment problem was simplified by the experience of other states. All stores are equipped with practically the same steel shelving, cash registers, and counters. All are painted a cream color inside and green outside. "New Hampshire State Liquor Commission" and the number of the store are printed in gold lettering across the window. There is no other ornamentation. A space of about twenty feet before the counter is open to the patrons. On one side is a shelf, as in a post office, where the patron makes out his order. Above are the names and prices of all brands on hand. At the rear of the store is the manager's desk. Usually there is a basement for the storage of all liquor not on the shelves. All sales agents are provided by the state with a neat uniform of tan trimmed with green.

*Selection of Personnel.* Selection of the personnel, upon which so much of the success of the state store system depends, is a huge job, especially in a year of economic depression. Over 3,000 people applied for some seventy positions. The law favors local residents and requires that ex-service men be given preference if equally qualified for a position.

New Hampshire does not have a personnel or civil service system. Therefore any system which was of a competitive nature was somewhat of an innovation. But the Commission was determined to see that choices were made from the best available personnel on a competitive basis regardless of politics, religion, or personal influence. The personnel officer interviewed all candidates whose applications appeared to warrant it. The interview gave opportunity to acquaint the applicant with the standards and requirements expected. More specifically, each applicant was told that for the first six months the successful appointee would be on a probationary basis, that all employees would have their fingerprints filed, and that a system of bonding would be established. The place of honesty, courtesy, accuracy, and neatness was emphasized. Personal appearance,

physical condition, age, and poise were noted. The burden of proving their essential qualifications was placed upon those who had had any previous connections with the liquor traffic or who had active political connections. On the basis of this interview, all applicants were graded and recommendations made for the future reference of the Commission. The commissioners, on their part, told applicants that they could not be considered until interviewed by the personnel officer. This fixed responsibility and relieved the Commission.

After the applicants were interviewed, the personnel officer visited the various localities, where he investigated references and conferred with as many impartially minded persons as possible on the relative merits of applicants. A check-up was always made with law enforcement officers, and any serious delinquency in the record of an applicant meant elimination from further consideration.

Candidates interviewed made, on the whole, a favorable impression. A surprisingly large number stated that they did not use liquor in any form. Most of the applicants had had business careers until forced out during the depression. Few were receiving public relief. The number of college men applying was negligible, while about half were high school graduates. Most of the applicants were married men.

Of the sales agents appointed, the average age is about thirty-five. Retail experience is a general rule. However, only one-seventh have had any experience with selling liquor. Two out of the first thirty-six appointees are college men. Practically all the others have high school education. Less than one-sixth were employed at the time the job was offered to them. No inquiries were made in regard to political affiliations. However, the preliminary interview eliminated all political office-holders. Nationality had to count in three or four instances where there are large French-speaking populations. About half of the sales agents are ex-service men.

*Wage Policy.* New Hampshire is a state with very low wage scales for its employees. Therefore it was impossible, without disturbing the whole state-house wage scale and producing serious political repercussions, to establish salaries as high as they should have been in the liquor department. The initial yearly salaries for the most important classes are: sales managers \$1,500, sales clerks \$1,200, inspectors \$1,500, the store supervisor \$2,400, the warehouse manager \$2,000, and the chief accountant \$2,200. It was agreed that definite increases varying from \$100 to \$25 a year should be given each year for a period of five years. However, it is appreciated by the Commission that if times improve, the whole salary scale must be revised upward if the present satisfactory personnel is to be retained. All salaries must be passed upon by the governor and council.

*Store Operation.* The first stores were opened on the week-end of August 17. They were overwhelmed with patrons. One store alone did a \$3,500 business. Adding to this volume of business a group of clerks inexperienced in handling liquor and in working together, the difficulties can be readily appreciated. Of course, some customers expected chain store efficiency at the very start. The Commission could not guess the number of clerks required, and was anxious to avoid overmanning the stores. Before the first stores opened, the sales agents, due to lack of time, were given no systematic training. Later on, men from the first stores were sent to instruct the force of new stores before and shortly after opening.

The Commission sent out instructions to all sales agents. In these, agents are forbidden to hold political office, actively participate in local option campaigns, drink any liquor on store premises, smoke while on duty, recommend any particular brand of liquor, or contact any liquor salesman. Patience, courtesy, and tact are insisted upon. On the whole, the men are doing a good job in living up to these instructions.

The Commission has the right to establish store hours at its discretion. Week-day hours have been fixed from 10 A.M. to 6 P.M., except on Saturdays, when the closing hour is 9 P.M. Sunday sales are prohibited.

Each customer must sign his name on an order slip. Since the slips have not been opened to public inspection, little opposition appears to have developed. More time should be permitted before passing judgment on the value of this as an administrative device. There is no limitation on the amount that may be purchased at one time, except the discretion of the sales agent. So far, few individuals have ordered more than one to three bottles at a time. Some people may be, and are, refused if they try to repeat during the same day. All liquor must be paid for in cash, and this tends to keep down quantity orders.

At present, there are eleven stores open. With the exception of the state's largest city, no place has more than one. In order to open a new store, the Commission must be convinced that there is a demand and that the store will pay its way.

*General Administrative Organization.* When it became evident that the third commissioner would not be appointed for some time, the other two divided their duties—although in every important instance the Commission decided as a whole. With this qualification, the chairman has general supervision over the stores and over the accounting and audit department, and is in charge of the purchase of supplies. Reporting directly to the chairman is the store supervisor. The latter spends most of his time in visiting stores, advising managers, inspecting premises and stock, and aiding in the establishment of new stores. The junior commissioner has general charge of licensing, the collection of license fees, and the law enforcement office. Under a director of law enforcement there are some ten

inspectors and investigators. So far, this general division of duties has greatly expedited the handling of the Commission's business.

*Conclusion.* The problems that are likely to be faced by the state store system in the next few months are, in addition to those mentioned, mostly political. There are groups which oppose a state store system on the ground that it is not liberal enough, or is entirely too liberal. In addition, the druggists, restaurant owners, small hotel owners, and advertisers want the law and its administration liberalized in the direction of their particular interests. Future events will have to show whether attacks from these quarters will diminish.

If the third member of the Commission is appointed, there will have to be a reapportionment of administrative duties. Also the unity and bipartisan character of the present Commission will be affected. But in spite of these difficulties, which should be surmounted, New Hampshire seems to have embarked upon a sound and conservative liquor control policy.

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## NOTES ON LOCAL GOVERNMENT

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**The Municipal Bankruptcy Act (Sumners-Wilcox Bill).** In February, 1933, during the closing days of the last "lame duck" session of Congress, Senator Fletcher of Florida introduced an amendment to the federal bankruptcy law under which insolvent municipalities might arrange a special composition of their debts with the consent of holders of a majority of such debts. This bill was introduced at the instance of officials of certain Florida municipalities. At about the same time, and in ignorance of the introduction of this bill, representatives of creditors of Florida and other municipalities visited Washington with the express purpose of investigating the possibility of securing federal legislation of this very nature. Considerable interest in the proposal was created in congressional and administration circles, and in the opening days of the new Congress which convened following the inauguration of President Roosevelt, Representative J. Mark Wilcox of West Palm Beach, Florida, introduced in the House a bill which in effect was a companion measure to the Fletcher bill above referred to. During the spring of 1933, this bill, which had been referred to the House judiciary committee, was the subject of several exhaustive hearings, and after having been amended in many particulars and finally rewritten, it was favorably reported by the judiciary committee as the Sumners Bill,<sup>1</sup> H. R. 5950. The measure came up for debate on the floor of the House, where it was passed on June 9, 1933. An unsuccessful effort was made to secure action on the bill in the Senate at that session.

Upon the reconvening of Congress in January, 1934, the drive for the enactment of the bill was renewed, and, following hearings before the Senate judiciary committee, the measure was favorably reported in somewhat amended form and passed during the first week of May. The Senate and House conferees reached an agreement on the bill promptly, and the President approved it on May 24, 1934, as Public Act No. 251 of the 73rd Congress; and the act became operative immediately.

The sole purpose of those who originally sought this legislation and were active in the campaign for its enactment was to secure legal machinery to compel minority creditors of a municipality to assent to a plan of adjustment acceptable to a majority of creditors and to the debtor municipality. No such machinery in the form of state laws existed, or could exist, because municipal debt readjustments necessarily require

<sup>1</sup> After Hatton W. Sumners, Texas, chairman of the House judiciary committee.

some impairment of the obligation of outstanding contracts, and any state law undertaking to legalize the impairment of contracts would be in conflict with the federal constitution.

As a matter of fact, no attempt had ever been made to enact federal bankruptcy legislation for municipalities, it having been rather generally believed that Congress lacked power to deal with the subject. Following the introduction of the Fletcher and Wilcox bills, many well-known authorities, including a special assistant attorney-general of the United States, came to the conclusion that Congress does have power to enact bankruptcy legislation for municipalities, and at this date there is little doubt in legal circles that the present municipal bankruptcy amendment would be upheld by the United States Supreme Court even had it not been enacted as an emergency measure and its period of effectiveness limited to two years.

When the effort to secure this legislation was initiated, municipal debt default conditions had reached a serious stage, and those who had been attempting to work out debt readjustments had found that in almost every instance they were blocked by dissenting minority creditor groups. During the long delay pending the final approval of the bill, the default situation became very much worse and virtually no progress was made in bringing about the settlement of municipal debt problems. The law has, at the date of writing, been in effect about six months. While the fact is that very few municipalities have taken advantage of the opportunity to petition the federal bankruptcy court for the purpose of having a debt adjustment plan made binding upon minority creditors, it is stated by bond attorneys and others who are very active in this debt adjustment work that the mere presence of the law on the statute books has resulted in breaking down the resistance of minority creditor groups to proposed plans of debt settlement, because these interests realize that if they do not go along with the majority, the municipality is now in a position to appeal to the federal court and, with its approval, proceed with its debt adjustment without danger of interference by minority creditors.

Opponents of the bill argued that it would be looked upon by municipalities as an invitation to evade payment of their debts. With one quarter of the two-year lifetime of the act already past, there is no evidence that any municipality will go into the federal bankruptcy court under the act except at the request of a majority creditor group with whom a final debt adjustment agreement, acceptable to both parties, has been reached. The testimony of experts to the effect that municipal debtors seeking to evade their obligations always shun the federal courts appears to have been sound in the light of actual experience with defaulting municipalities during the last six months.

The Municipal Bankruptcy Act applies to any municipality or other political subdivision in the United States—to use the language of the act, any "taxing district." So far as these districts are concerned, the act is purely permissive. A further important point is that it is expressly provided in the act that no plan shall be finally confirmed by the court until the district is authorized by its own state laws to take such action as is necessary to carry out the plan. The act was also carefully drawn so as to preclude the possibility of interference by the federal court with the political or governmental powers of the district.

Without attempting to set forth in detail the procedure to be followed under the act, it may be pointed out that as a condition precedent to the filing of a petition, a taxing district must secure the assent of creditors owning not less than 30 per cent in the case of drainage, irrigation, reclamation, and levee districts, and not less than 51 per cent in the case of all other taxing districts, in amount of the bonds, notes, etc., affected by the proposed plan. Provision is made for creditors holding 5 per cent in amount of indebtedness to oppose any proposed debt settlement. Before the bankruptcy court may confirm a plan of readjustment, approval is required of creditors holding  $66\frac{2}{3}$  per cent in the case of drainage, irrigation, reclamation, and levee districts, and 75 per cent of the debts in the case of all other districts. Confirmation of the plan by the court is to be made if the court is satisfied, among other things, that the plan is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any class of creditors.

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**Virginia's Progress in County Government.** The first concrete step looking toward the improvement of Virginia's archaic and obsolete system of county government was taken on June 19, 1928, when Section 110 of Article 7 of the state constitution setting forth the organization and government of counties was enlarged to provide that "notwithstanding the provisions of this article, the general assembly may by general law provide for complete forms of county organization and government different from that provided for in this article, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon." In pursuance of this constitutional change, the general assembly of 1930 provided for the creation of a permanent commission on county government, to be known as the Virginia Commission on County Government. The duties of the commission, as defined by law, were to draft a general law setting forth optional forms of county government to be submitted to the general assembly of 1932; to analyze and interpret

statistics as to the cost of county government; and to study the various governmental activities in which the several counties are engaged with a view to informing the citizens of the counties as to the progress, effectiveness, and cost of such activities.

A report, *The Organization and Management of County Government in Virginia*, embodied the fulfillment of the first duty of the commission. Here the present status of county government was set forth and its chief defects analyzed. Summarizing its findings,<sup>1</sup> the commission characterized the organization of county government in the state as inevitably inefficient, wasteful, and irresponsible: inefficient because of a cumbersome, over-elaborate, and disintegrated administrative mechanism; wasteful because of overlapping, obsolete, and useless offices and agents; irresponsible and undemocratic because the people have no direct representative body with sufficient power to plan and direct the policies of the county for them, and whom they can justly hold responsible for the success or failure of administrative officers whose varied activities they are unable to follow directly.

The fee and commission system of compensating county officers was regarded as a serious defect. Another outstanding weakness was found in the economic inability of some counties to support any adequate or satisfactory unit of government, owing to a lack of sufficient area, population, and taxable wealth to support the services demanded by the modern community. Further defects were discovered in the lack of an orderly financial procedure and in the archaic and incompetent systems of rural justice, under which the most numerous classes of cases were tried by justices without the training or ability to render decisions that were either just or intelligent.

To remedy these conditions, the commission proposed a well-rounded program of legislation the essential parts of which were enacted into law by the general assembly. Part of this legislation paved the way for a thoroughgoing reorganization of county government and the removal, by one stroke, of the major defects of these governmental units. The rest was designed to effect certain improvements in the administrative procedure of the existing county organization. Space will permit consideration of only the first type of legislation.

*The Optional Forms Act of 1932.*<sup>2</sup> The reorganization act of 1932 sets up two complete forms of county government, designated respectively as the *county executive form* and the *county manager form*, either of which may become effective in any county when approved by the qualified voters thereof.

<sup>1</sup> *Report of the Commission on County Government to the General Assembly of Virginia, December, 1931*, p. 78.

<sup>2</sup> *Acts of Assembly, 1932*, Chap. 368.

The county executive form, embodying a slight modification of the manager idea, is designed to meet the needs of counties of various sizes and conditions. Under this plan, the entire legislative and administrative authority in the county is vested in a county board of supervisors of not fewer than three nor more than seven members, to be elected, one from each magisterial district, by the qualified voters of the entire county. The county board thus determines the policies of the county, enacts local legislation, levies taxes, makes appropriations, and directs and controls in a general way the county's administrative activities.

The board is authorized and required to appoint a county executive—a full time officer who may, in the discretion of the board, be the head of one or more of the departments of county government. The chief duty of this officer is to act as the administrative head of the county. He is required to carry out the policies determined by the board, to coördinate the affairs of the county, and to see that the proper administrative procedure is installed and enforced. He is required to prepare the budget and to make monthly reports to the board concerning the activities of the various departments and the financial condition of the county.

The board is further empowered to appoint, upon recommendation of the county executive, all administrative officers and employees of the county except the county clerk, the commonwealth's attorney, and the sheriff, who under the act remain elective.

Provision is made for the regrouping and consolidation of all functions of the county into a small number of departments or divisions. To insure flexibility, and to render the plan adaptable to the needs of any county in the state, it is provided in both the executive form and the manager form that "any activity which is unassigned by this form of county organization and government shall, upon recommendation of the county executive (or the county manager as the case may be), be assigned by the board of county supervisors to the appropriate department. The board may further, upon recommendation of the county executive, re-assign, transfer, or combine any county functions, activities, or departments."<sup>3</sup>

The county manager form differs from the county executive form in two major respects, both having to do with the appointment and compensation of officers and employees of the county. Under the manager plan, the manager appoints most of the administrative officers of the county and fixes the compensation, subject to approval by the board of supervisors, of all those appointed by him. Under the executive plan, the board of supervisors, as previously pointed out, appoints, upon recommendation of the executive, all officers of the county except the

<sup>3</sup> *Code of Virginia, 1932 Supplement, Sec. 2773-n10.*

clerk, sheriff, and commonwealth's attorney, who remain elective under both plans, and fixes the compensation of all officers and employees of the county, including the three elective officers.

In brief, both of these plans provide for the appointment of all county officers in the administrative service of the county except the three named; both plans place all county officers and employees on a salary to be fixed either by the board of supervisors or the manager with the approval of the board, and therefore effect complete abolition of the fee system as a method of compensation; both plans provide the board of supervisors with a responsible executive agent having the power and the responsibility for the efficient conduct of all the administrative activities of the county which the board has authority to control.

It should be pointed out that an act of 1930 applicable only to Arlington county provided for that county a partial or limited county manager plan.<sup>4</sup> This law leaves untouched the major elective officers of the county such as the treasurer, commissioner of revenue, clerk, sheriff, and commonwealth's attorney. Neither the manager nor the board of supervisors has any effective control over these officers. It is apparent, therefore, that except for the provision of a manager, there has been little change in the administrative structure of this county.

*Popular Response to the Legislation of 1932.* Since the enactment of the Optional Forms Act of 1932, referenda on the plans therein provided have been held in five counties. In two of these, the county manager plan was defeated and in one the executive plan was defeated. In Henrico and Albemarle counties, the county manager plan and the county executive plan, respectively, were adopted and have been in legal effect since January 1, 1934, although court action, necessitated by the refusal of certain officers of the old system in both counties to surrender and vacate their offices, postponed the actual operation of the new plans for approximately three months.

*The New Plans in Operation.* In both Henrico and Albemarle counties, substantial improvements have been effected under the new plans. In Henrico, a reduction of 26 per cent in the general county levy was provided in the new county budget; adequate provision was made for caring for the previously incurred indebtedness of the county, which seems not to have worried the previous administration; services have been expanded or improved in practically every department with no increase in the aggregate expenditures of the county.

In Albemarle, a reduction of more than 40 per cent in the cost of handling the financial department alone has been effected through the abolition of the offices of treasurer and commissioner of revenue, and consolidation of the functions thereof in a department of finance under

<sup>4</sup> *Acts of Assembly*, 1930, Chap. 167.

the direction of the executive. A reduction of more than 30 per cent in general county administration, which does not include schools, has been effected. In general, improvements in administrative procedure and in positive governmental services have been noted. In Arlington county, substantial economies and improvements in administrative service have been realized through the efforts of a capable manager, in spite of the structural defects of the plan in effect in that county.

In each of these counties, there is observed a revival of popular interest in local government. The people have confidence in the new system, not only because it is more efficient, but also because they realize that they now have a means of holding the local authorities definitely responsible for the success or failure of their government.

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**State Operation Saves Money in North Carolina.** More functions have been transferred from the local governments to the state in North Carolina than in any other state, and they are being supported without ad valorem taxation.

**Schools.** Ten years ago the state was appropriating \$1,250,000 a year from its general fund to help defray the cost of the public schools in those counties least able to bear the burden alone. In 1925, the appropriation was increased to \$1,500,000; in 1927, to \$3,250,000; and in 1929, to \$6,500,000. In the last-mentioned year, the operating cost of the public schools was about \$26,000,000; thus the state was bearing about one-fourth of it. This was from other sources of taxation than property, for there had been no property tax for state purposes since 1920. As the depression deepened and property values fell, it became apparent to the legislature of 1931 that owners of property must be given still greater relief. Hence it provided for full state assumption of the minimum constitutional term of six months, with the counties contributing only the proceeds of a tax of .15 cents on each hundred dollars of assessed value. But this program failed to work out satisfactorily. Not only did many local districts fail to raise taxes for an extension of the term beyond the minimum of six months, but the state itself accumulated a deficit of nearly \$13,000,000 in the biennium ending June 30, 1933. Despite the deficiency, the state removed the 15-cent tax on property and at the same time assumed responsibility for the operation of the schools for eight months. To finance such a program, business, income, and franchise taxes were increased and a general sales tax was imposed. The annual appropriation for the state-wide term of eight months was fixed at \$16,000,000, compared to \$17,500,000 for a six-month term in the preceding biennium.

It must be admitted that much of the reduction in school costs was effected through salary cuts. Teachers are paid according to a state-wide salary schedule, the maximum salary for a class-room teacher now being \$90 a month and the minimum \$45. This is for white teachers; the amounts are considerably less for colored teachers. A principal with 20 teachers and four years' experience gets \$175 a month. These salaries are for eight months only. North Carolina is not proud of these low salaries and does not intend that they shall remain at this level. Indeed, there is every prospect that they will be increased appreciably next year.

However, not all of the saving effected has been due to salary reductions. When the state took over the schools, all district lines were obliterated and new and larger districts were created. The number of administrative units was reduced from 2,225 to 867, the new district lines being drawn without regard to political complexities or the distribution of taxable wealth. The state has a very complete system of school transportation, and under state supervision, with better maintenance of buses, this cost has been reduced from \$2,300,000 to \$1,700,000. The cost of coal has been reduced from \$600,000 to less than \$400,000, largely through inspection of furnaces and prescribed methods of operation.

This has not been accomplished without some sacrifice of home rule, and there have been protests. Some can be traced to dislodged school officials, some to merchants and salesmen whose business has been injured, but some also to parents and teachers who are genuinely distressed because the program appears to be one of "leveling down" rather than of "leveling up." The last-mentioned criticism would be a just one if the present policy were not liberalized as economic conditions improve. The new school law required that no special school tax be levied without a fresh mandate from the people, but no city was denied the right to vote on the proposition unless it was in default. Cities like Greensboro, Charlotte, and Winston-Salem held elections and the schools lost because depression psychology prevailed. It might have been unfair to put the schools on the defensive at such a time, but it undoubtedly prevented many units from continuing to spend beyond their capacity to collect the taxes. Better school systems have suffered seriously; many of the best teachers have resigned; the children have been the victims of false economy. But these conditions are not peculiar to North Carolina, and are perhaps less devastating and can be more easily repaired than would have been the case had not the state entered the picture. It will bear emphasizing that every school has operated for a full term, that every teacher has been paid promptly and in full, and that the credit of the state has been preserved. Now, with improvement in economic conditions, educational advance can be resumed.

*Roads.* In 1931, North Carolina took over the maintenance of every mile of public road in the state, except city streets. This added about 46,000 miles of secondary roads to a state system which already had nearly 10,000 miles of primary roads. Since that time, certain main-traveled roads have been shifted from the secondary to the primary system, and a small mileage has been added to the secondary system. At the present time, the mileages in the two systems are 10,550 and 46,750, respectively. The cost of operating the two systems is kept separate.

In the first year under state maintenance, expenditures for construction and maintenance in the secondary system amounted to \$7,280,601. This figure includes \$900,000 spent in the construction of prison camps. In the following year (1932-33), the corresponding expenditure was \$4,659,740, and last year it was \$4,660,429. This, it will be observed, is about \$100 per mile. During the last year in which the counties maintained the roads, they spent \$8,233,000, according to the best analysis of county expenditures that could be made. This pronounced reduction is, of course, partly attributable to the lower price level which has prevailed in recent years. It is impossible to estimate how much the counties would have spent in these last two years. Perhaps they would have spent less than the state has spent, but it is almost certain that many would have let the roads deteriorate. It cannot be claimed that the state has spent all that could have been spent profitably. But it has been the policy to build up a balance in the highway fund in order that the state might serve as banker for the general fund. Last year, highway revenues exceeded expenditures by \$5,815,000; and this was after \$1,000,000 had been diverted (donated) to the general fund.

*Convict Labor.* One of the direct benefits of state maintenance of all highways is the opportunity that it affords for the wholesome and profitable employment of convict labor. The state has constructed 82 permanent prison camps, to which those who are employed on the highways return each night. These camps are equipped with shower baths; the food is well-balanced; there are facilities for recreation; and a doctor is attached to each camp. While discipline is necessary, there has never been a hint of such abuses as frequently prevailed in the county chain-gangs. Already this season, the camps have canned 147,000 cans of vegetables grown in the camp gardens. Last year, the cost of maintaining a prisoner was 48.58 cents per day. This covered food, clothing, hospitalization, guarding, and everything except interest on the capital equipment.

The prison division charges the highway maintenance division 80 cents a day for the labor that it uses. If convict labor is not worth 80 cents a day to the highway department, then of course it is supporting the state prison to the extent of this excess labor cost.

*Centralized Purchasing.* In 1931, the state established the office of state purchasing agent, and all supplies and equipment used in the state institutions and in all the state departments are now bought through this agency, except only perishable foods and school textbooks. No estimate of saving would be ventured by the office, because it keeps no consolidated accounts. In fact, the agency handles no money; it simply receives periodic requisitions from the several departments and institutions, consolidates the orders, and asks for bids. The contracts are let to the lowest bidder, quality being considered, and the orders are broken down and shipped direct to the using agency. Payment is made by this agency.

*Observations.* To some people, these steps in the direction of state centralization may appear alarming. There is some protest in North Carolina. But, in the main, the transfer of functions from the county to the state is recognized as an economy. In the case of roads, the service has been improved along with the reduction in cost. In the case of the schools, sacrifices have had to be made during the present period of depression which it is hoped can soon be alleviated. The great desire on the part of almost everybody was a substantial reduction of property taxation, and that has been achieved. The counties of the state have been enabled to cut their tax rate from an average of \$1.64 per \$100.00 of assessed value in 1930 to an average of 88 cents last year. This is along with a reduction of about 30 per cent in the assessed value of property. Stated differently, county and school taxes borne by property have decreased from a peak of about \$45,000,000 to not more than \$20,000,000 at the present time. If this reduction has been achieved at the cost of some surrender of local self-government, most people seem satisfied with the exchange.

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**The Michigan Amendment to Reorganize County Government.** In 1929, and again in 1933, the Michigan house of representatives refused to submit to the voters comprehensive constitutional amendments for county reorganization which had been passed by the senate. In the special session of the legislature in 1934, a compromise amendment was passed unanimously by the senate, but this, likewise, was defeated in the house. Following the third legislative rebuff in five years, a state committee on county reorganization was called into being with the avowed purpose of placing an amendment on the ballot by constitutional initiative. The draft of the amendment was prepared by a sub-committee which included Claude H. Stevens, Divie B. Duffield, Mrs. A. R. Pribil, J. M. Leonard, Thomas H. Reed, Lent D. Upson, and Arthur W. Brom-

age. Although the drive for signatures did not fire its opening gun until three months before the filing date, some 250,000 names were obtained—well over the number necessary to put the amendment on the November ballot. William P. Lovett led the campaign for signatures in the Detroit metropolitan area and Clarence V. Smazel supervised the work in all other sections. Committees of volunteers in the populous counties performed Herculean labors. The League of Women Voters and other civic, professional, and business groups worked with might and main during the intensive campaign. The daily newspapers of the state gave the amendment their all but unanimous support and indispensable publicity. The opposition has been in large measure an invisible one, although the rural weekly papers have not hesitated to voice their objections.

A single type of organization is at present imposed by the Michigan constitution upon all the counties of the state. Constitutional stipulations call for a long ballot and for cumbersome county boards of township and city supervisors. While the rural counties in northern Michigan seem willing to tolerate this system, the southern industrial counties are finding it increasingly unsatisfactory. The Wayne county board is now approaching a membership of 150, and boards of 30 to 50 members are the rule in other urban counties. The long ballot for the election of the clerk, register of deeds, treasurer, sheriff, prosecuting attorney, surveyor, *et al.*, leaves no room for a chief executive. No effective correlation between the board and administrative agencies is provided.

The newly-initiated amendment for county reorganization affords a remedy through the optional law system and county home rule. Paragraph (a) provides that the legislature shall by general law provide alternative forms of county government. No alternative plan can become effective in any county unless approved by a majority of the qualified electors voting thereon. This constitutional proviso would, at least, make possible the establishment in Michigan of an optional law system similar to that already operating in North Carolina, Virginia, Montana, and Nebraska. Optional alternative types of county government would be possible, but not necessarily probable.

In view of legislative recalcitrance in the matter of a constitutional amendment, it would have been political ineptitude to rest the case for county reorganization on the optional law system alone. Consequently, paragraph (b) authorizes the board of supervisors of any county, by a two-thirds vote, to submit to the people a plan of county organization. Further, a plan of county government may be initiated by petitions signed by registered voters to the number of ten per cent of the vote cast in the county for all gubernatorial candidates at the preceding election. When such petitions have been filed with the county clerk, he must

submit the plan of government to the voters at the next general or special election if one occurs not less than forty days nor more than six months after the filing date. Otherwise he is to submit the plan at a special election to be held not less than 60 nor more than 120 days after the date when the petitions are filed. Amendments to any plan of county government adopted under this paragraph may be submitted in the same manner as plans of organization. No plan or amendment can become effective in any county without a majority vote of those voting on the question. If more than one plan, or two or more conflicting amendments, are adopted at the same election, then the one receiving the greatest number of affirmative votes is adopted. Paragraph (b) also provides for the publication of any proposed plan or amendment in a newspaper of general circulation, and for the filing of copies of any adopted plan or amendment with the secretary of state.

Paragraph (c) provides that any optional law passed by the legislature or any home rule charter or amendment thereto may "eliminate any constitutional county office and may provide for the number and manner of selection of the board of supervisors and of all other county officers and employees, for the powers, duties, terms, and compensation of all county officers, and for the creation, abolition, and/or consolidation of county offices." However, any home rule charter or amendment must provide for "the exercise by appropriate officers of the county of all duties and obligations now or hereafter imposed by law on counties and county officers." The amendment does not apply to circuit judges or judges of probate.

The proposed amendment, through the device of the home rule charter, will forestall legislative nullification of the reorganization movement. Failure of the legislature to enact alternative forms of government will not block progress. Counties may resort to the home rule device. Even if the legislature should adopt alternative forms, it is highly probable that the populous counties would want to experiment with home rule charters. Regardless of legislative action or inaction, the home rule principle would be available to counties.

The Michigan amendment illustrates the growing desire to break away from constitutional forms of county government designed for rural, agricultural conditions. The growth of urbanization has made the county an urban as well as a rural problem. A uniform system of county organization created by the state constitution and predicated upon rural conditions will not do for the urban counties of today. Only through such amendments as that proposed in Michigan can this problem be solved. The experience of Ohio in 1933 showed that this type of amendment will precipitate rural opposition in defense of the old order and urban demand for a change. This split has been obvious in the campaign for the adoption

of the Michigan amendment. Since county organization must meet the needs of such diverse conditions and populations, it seems clear that it should be a flexible institution and not a rigid constitutional mandate. While this may be clear to the political scientist, it is equally apparent that the urban voter must be aroused to the issue and that the fears of the rural dweller must be allayed. The Michigan amendment is designed to give the urban counties a chance to reorganize, while the rural counties may stand pat if they choose to do so.<sup>1</sup>

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**Local Government Progress in California. *The County Executive Plan.*** The county executive charters of San Mateo and Sacramento counties went into operation in July, 1933, with a full set of elective officials under the old constitutional and statutory provisions. Although the county executive took office at this time, the charters will not be in full force until January, 1935, after eighteen months of operation in the transition period. Both counties have shown marked improvement during this transition period. It is not necessary to point out the details of adjustments in the fiscal and structural operation during this time. However, the centralization of services in the engineer, director of health and welfare, and controller or auditor showed substantial savings in unit and comparative costs of operation.

In San Mateo county, a number of friendly suits were brought to test the provisions of the charter which created a qualification board to examine the applicants for the position of county executive, the consolidation of all road work in the engineer, the power of the board of supervisors to remove officers appointed by the county executive, as well as the power of the board to appoint to the position of county executive one who had been the employee of a public utility corporation. The charter provision creating the qualification board was declared

<sup>1</sup> The county home rule amendment was defeated. Incomplete but representative returns were as follows: yes, 333,000; no, 422,000. The amendment appeared on the ballot with five other amendments. Four of these clearly deserved defeat. A fifth, calling for the non-partisan election of judges, was a matter of opinion. Toward the close of the campaign, fourteen state-wide organizations, in an effort to defeat four of the amendments, urged the voters to say "no" to all. Some of these groups had previously supported county home rule, but abandoned it in the closing weeks to prevent confusion. The voters responded by defeating every amendment on the ballot. In number of affirmative votes, county home rule ran second to the non-partisan election of judges, but the other amendments were overwhelmed two, three, and four to one. Wayne (Detroit) and Oakland (Pontiac) counties gave county home rule a majority. The amendment ran well in Kent (Grand Rapids), Genesee (Flint), and Jackson (Jackson) counties. Majorities against the amendment piled up in the rural counties.

invalid because justices of the superior court are prohibited from performing any except judicial duties under the constitution of the state. The case concerning the consolidation of road work was watched with much interest by seventeen other counties which had created the position of county engineer and removed all road work from the administrative powers of the board of supervisors. This removal of political power by the centralization of road funds and jobs is one of the most important steps forward in the reconstruction of our county governments.

Sacramento county has been quiet and apparently contented under its new charter provisions. The incumbent county surveyor was named to the position of county executive, and the transition from the old to the new plan is being made without serious objection. In both counties, there have been some indications that more of the administrative officers should have been brought under the executive control. This was attempted in the proposed charter for Santa Clara county which was defeated in February of this year. In this charter, the county executive was to be the controller and to have complete charge of fiscal and personnel operations of practically all of the departments of the county.

Both of these charters follow the essentials of the plan proposed by the committee on county government of the National Municipal League. They are apparently well received in other parts of the state, as is evidenced by the amount of study in different counties looking to some change in the existing legal setup. San Mateo county is a part of the San Francisco metropolitan region and will be included in the various studies which are being made for a simplification of the governmental units in that area. It faces pressure from San Francisco for consolidation with that city and county. The construction of the San Francisco-Oakland bridge is bringing the matter of metropolitan simplification much to the fore on both sides of the bay. Experience with the county executive plan and a general examination of the results of the simplification study in Los Angeles have convinced many who are interested in this matter of the necessity of a detailed and thorough reorganization in the San Francisco Bay region.

*Governmental Simplification in Los Angeles County.* A plan for voluntary gradual absorption of functions of local areas into a central metropolitan government is provided in a preliminary report of the Committee on Governmental Simplification of Los Angeles County. The committee found in its study 454 taxing agencies within the limits of the county. The larger part of these are single-service, or functional, governments. There are 44 municipalities, 151 school districts, 30 fire districts, 42 sewer districts, 96 lighting and maintenance districts, and 90 miscellaneous districts. This indefensible multiplication of government areas brought about a strong demand for some plan which would consolidate

the governmental structures or the like functions of the various governments. Los Angeles county has experienced a type of functional centralization for about twenty years. A majority of the municipalities within the county have contracted with the county government for tax assessment and collection and public health service. Charities and the supervision of weights and measures for the city of Los Angeles are handled by the county. Many studies and reports have been made, but no plan has been as comprehensive or as well received as the one proposed this year.

The solution for this region is comparatively simple in that the entire group of governmental units is within the county boundaries and can be observed with the eye from several prominent points within the area. There is no complication of county or state lines. Los Angeles county has had a home rule charter since 1912 and probably exercises more governmental functions than any county in the United States. Individual studies were made of each taxing area from the viewpoint of political structure and functional operation. There was found to be a very large difference in the political structure of the 44 cities, some under home rule charters and others under the sixth-class law. However, as would be expected, there was a notable similarity in the functions performed by these cities, as well as by various corresponding units in the unincorporated areas. The committee felt that some plan could be devised in which the metropolitan area should be considered as a unit. A central metropolitan government was proposed, headed by a council of fifteen representatives elected at large on a scheme of proportional representation (if this can be made constitutional in this state) for terms of four years. This metropolitan legislature was to select a chief administrator, who would appoint the heads of the staff and control bureaus and the functional departments. Each local incorporated area would retain its legislative body as at present or as proposed by the committee, but its administrative departments would be gradually abolished as the local council decided to have each particular service operated by the metropolitan administrative authority. The unincorporated or rural areas would be formed into convenient groups, with local councils, similar to the incorporated councils, to advise the metropolitan legislature on the needs of their respective communities. This plan, with its voluntary discarding of local functions, as it has been adopted by 36 of the 44 municipalities in the past, overcomes the usual objections found in campaigns for consolidation of existing political units. The metropolitan government is authorized to levy a general service charge or tax for each particular function and to establish a base service which would be rendered alike to all sections of the area. If any of the local councils decide that they would like to have a higher degree or type of service,

they may ask for such service and have an additional tax or charge on that area alone for the improved amount of service.

Under the California constitution, counties and cities are authorized to contract with each other for the performance of municipal services. This plan, based upon such authorization, could be adopted outright and all of the cities abolish their local administrative departments by merging them into metropolitan departments; or they might take the step of delegating their functions one by one to the central organization; or again they might remain autonomous until ready to enter in part or as a whole into the proposed scheme.

Naturally, the proposal is a tentative one and is now open for study and discussion. Many barriers are before it. Perhaps it will be necessary to have a few constitutional amendments or changes in the statutes affecting the smaller cities and the special districts. However, the proposal is so simple and the need so great that there is no doubt but that most of the smaller units will be glad to come into the plan immediately. Of course, larger cities like Pasadena, Long Beach, and Glendale feel themselves in competition with Los Angeles and will probably wish to protect themselves from any possibility of domination in the metropolitan government by their larger neighbor. With the preservation of some degree of autonomy in the local communities, it is expected that much of this provincial feeling will be overcome. Los Angeles county needs an immediate consolidation of its water supply and sewage disposal systems, as well as of the lesser services of fire, police, and health protection. An expanding amount of governmental service, with decreasing ability to raise sufficient revenue, will doubtless carry this proposal much more rapidly on its way than would be possible under normal or boom conditions.

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## INTERNATIONAL AFFAIRS

**The Proposed Generalization of the Minorities Régime.** The racial policy of the present German government has created a new interest in the problem of protection of minorities. Governments hitherto apathetic in regard to the problem were aroused by the Bernheim petition to the League in the spring of 1933 complaining of the discriminatory character of legislation in violation of the German-Polish convention of 1922.<sup>1</sup> They were also compelled to give attention to the renewed demand of the minorities states for a treaty binding all members of the League to respect the rights of their minorities. States like Italy and France, with large sections of their territory populated almost entirely by German-speaking people who are deeply conscious of their cultural differences with the majority of the state's population, would be expected to show considerable interest in the demand of the minorities states. Other states in whose territory reside many people differing in race, language, or religion from the majority of the population would also necessarily be concerned. The minorities régime and some of the problems created by it have been described in several publications.<sup>2</sup> It is the purpose of this note to trace the movement for, and to attempt an evaluation of, the so-called generalization of the obligations which certain states, members of the League, have assumed.

The present system originated at the Peace Conference at the close of the World War. One of the supplementary agreements to President Wilson's second draft of a covenant for a League required all new states "to bind themselves as a condition precedent to their recognition as independent or autonomous states to accord to all racial or national minorities within their several jurisdictions exactly the same treatment, both in law and in fact, that is accorded the racial and national majority of their people."<sup>3</sup> The British government preferred to leave the question of racial and national minorities to be settled in the territorial treaties. It preferred this method because it would permit special treatment in cases demanding it and, moreover, would permit the establishment of regional guarantees of the terms of the treaties by joint action of the states immediately concerned.<sup>4</sup> The provision remained in Wilson's third

<sup>1</sup> See below, p. 1095.

<sup>2</sup> League of Nations, C. L. 110. 1927. I; *Encyclopedia Britannica* (14th ed.), "Minorities"; *Geneva Special Studies*, Sept., 1931; Julius Stone, *International Guarantees of Minorities Rights* (London, 1932); *Bulletin International du Droit des Minorités* (Sijthoff, Leiden, since May, 1931).

<sup>3</sup> David Hunter Miller, *Drafting of the Covenant*, II, p. 91.

<sup>4</sup> *Ibid.*, II., pp. 129-130.

and fourth drafts, but did not come before the Commission engaged in framing the Covenant. Article 19 of the Hurst-Miller *redaction*, which served as the basis of discussion in the Commission, provided that "the High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practice any particular creed, religion, or belief whose practices are not inconsistent with public order or public morals."<sup>6</sup> This article was finally dropped owing to the opposition of a few members of the Commission, particularly Venizelos, and to the attempt by the Japanese member to insert a clause stipulating racial equality.<sup>6</sup>

The outcome of the various proposals of governments represented at the Peace Conference and of the agitation of individuals and private associations for measures to protect minorities was the conclusion of several treaties, separated from the peace treaties except in a few cases, by the Allied and Associated Powers with individual states which undertook to respect the rights of racial, religious, and linguistic minorities, and which accepted the League's guarantee of the rights stipulated in the treaties. The states upon which the treaties were imposed are Poland, Czechoslovakia, Yugoslavia, Austria, Hungary, Bulgaria, Greece, and Rumania.<sup>7</sup>

Before these obligations were finally accepted by the above-named states, their representatives objected to the discrimination between them and other members of the League. They considered the imposition of these obligations on them and not on all states a violation of the principle of state equality.<sup>8</sup> President Wilson undertook to placate the representatives of these states. He pointed out that the burden of obtaining the decision which resulted in the creation of new states and in the accessions of territory to others had been borne by the Great Powers, which would also in the future bear the burden of maintaining the peace. Elements of disturbance of the peace they were therefore justified in removing.<sup>9</sup>

The limited application of the régime was also defended by the president of the Peace Conference, M. Clemenceau, in a letter to M. Paderewski, president of Poland, in which M. Clemenceau contended that the Conference, in requiring the new states and those receiving large accessions of territory to accept these obligations, was conforming to

<sup>6</sup> Miller, II, pp. 237.

<sup>7</sup> *Ibid.*, II, pp. 273-274, 307, 323-325, 387-392.

<sup>8</sup> Citations in footnote 2.

<sup>9</sup> Miller, *My Diary at the Conference of Paris*, I, p. 82, and Doc. 188; XIII, *passim*; H. W. V. Temperley, *History of the Peace Conference*, V, pp. 129-133.

<sup>10</sup> *Ibid.*

an "established procedure of the public law of Europe," citing the action of the Berlin Conference of 1878 in requiring pledges from the Balkan states in return for recognition by the Great Powers. He also emphasized the responsibility of the Great Powers for insuring the peace threatened by the antagonisms between nationalities in Eastern and Central Europe. He did not mention the existence of similar conditions in territories of other states, including the Great Powers, which might have justified the demand that other, if not all, members of the League accept the same obligations. Implicit in M. Clemenceau's letter is the idea that it had been the duty of the Great Powers to exercise a certain authority in European political affairs, and that this duty would now be partly transferred to the League, particularly to the Council, in which the guarantee of the treaty provisions was invested.<sup>10</sup>

Obligations to respect the rights of minorities and the League guarantee of the provisions defining these rights were accepted by Albania and the Baltic states when they entered the League. Before accepting them, these states protested against the imposition of special duties on them, as did the other states at the Peace Conference. By subsequent arrangements, the League guarantee has been extended to Turkey, Irak, and Germany, in the last case, however, only to the rights of the minorities in German Upper Silesia.<sup>11</sup>

The limited application of the League guarantee has been consistently opposed by the minorities states, by several associations, and by a number of individual writers, usually on the ground that it violates the principle of state equality. They have urged the generalization of the obligations and of the guarantee or the suppression of the present system and the adoption of a general principle that a minimum standard of rights of individuals must be respected by all states.<sup>12</sup> For example, an international jurist, M. Mandelstam, has advocated such a course before the Institute of International Law.<sup>13</sup> Of course the most insistent

<sup>10</sup> Temperley, V, pp. 432-437.

<sup>11</sup> League of Nations, C. L. 110. 1927. I; *Official Journal*, 1921, 1161; 1922, 733-750, 1232-1237; 1923, 379-382, 1361-1363. *Reichsgesetzblatt*, 1922, II, p. 518 et sqq.

<sup>12</sup> League of Nations, O. J., 1929, Special Supplement, No. 73, O. J., 1926, p. 286 et sqq. Article by Fouques-Duparc in *Revue de Droit International et de Législation Comparée*, 1926, 3rd series, XII, pp. 509-524.

<sup>13</sup> M. Mandelstam brought the question of generalization to the attention of the Institute as early as 1921. A committee was created to study the international protection of the rights of man, of citizens, and of minorities. As *rapporteur*, M. Mandelstam presented reports in 1925, 1928, and 1929. In this last year, upon introducing a draft convention embodying a declaration on the protection of the rights of man and of citizens, he stated that there was considerable opposition to the generalization of the obligation to protect minorities, and that consequently he had submitted to the committee the proposal of a declaration aiming at the protection of the rights of man which he thought every government could properly endorse. At

demand for generalization has come from the minorities states. The representatives of these states on the Council and on the Sixth Committee of the Assembly have on numerous occasions expressed their objections to the special position in which they have been placed and have proposed that the Council consider the extension of the guarantee to all members of the League.<sup>14</sup> The advocacy of reforms in the present system invariably brings a demand from one of the minorities states for generalization.<sup>15</sup>

The only concession made to the demands has been the adoption of a resolution by the League Assembly in 1922. This resolution is as follows: "The Assembly expresses the hope that the states which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious, or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council."<sup>16</sup> It is readily perceived that this resolution falls far short of meeting the demand of the minorities states, so that it is not surprising that they have continued their agitation for further action by the League in successive meetings of the Assembly.

The case against generalization was summarized in 1926 by the *rappoiteur* on minorities who had been asked to examine the proposal of the Lithuanian government that a committee be appointed to consider the application of the guarantee to all members of the League. He said: "A minority, as defined by the treaties assuring its protection, is not only a social group incorporated in a body of a nation of which the majority forms a different racial unit. There is also a psychological, social, and historical attribute, constituting, perhaps, for the purpose of the definition which we are seeking, its principal differential characteristic. The mere co-existence of groups of persons forming collective entities, racially different, in the territory and under the jurisdiction of a state is not sufficient to create the obligation to recognize the existence in that state, side by side with the majority of its population, of a

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the same time, he presented as a recommendation a draft convention for the protection of minorities. The declaration produced considerable discussion among the members of the Institute. After making some changes in the text as presented by the *rappoiteur*, and after several members explained that they did not consider the declaration as of much value, the draft declaration was adopted by a vote of 45 to 1, with eleven abstentions. None of the English members supported it. *Annuaire* 1925, 246-392; 1928, 275-311; 1929, I, 715-732; II, 110-138.

<sup>14</sup> See the minutes of the Sixth Committee of the Assembly, published as special supplements of the *Official Journal*. See particularly O. J., 1926, p. 286 et seqq.

<sup>15</sup> Especially O. J., 1929, Special Supplement 73, p. 70; O. J., 1930, 1931, 1932, 1933, Special Supplements 90, p. 115; 99, p. 14; 109, p. 33; 120, pp. 30-55, *passim*, respectively.

<sup>16</sup> League of Nations, C. 8 M. 6. 1931. 1. pp. 240-242. Records of Third Assembly, Plenary, 37-107, *passim*. Minutes of Sixth Committee, 11-30.

minority requiring a protection entrusted to the League of Nations. In order that a minority, according to the meaning of the present treaties, should exist, it must be the product of struggles, going back for centuries, or perhaps for shorter periods, between certain nationalities, and of the transference of certain territories from one sovereignty to another through successive historic phases. These factors, however, are not constant in all states members of the League of Nations. In the countries of the American continent, they do not exist at all, and they have not sufficiently objective character to enable the social fact in question to be described. A general treaty for the protection of minorities such as was proposed . . . would be without meaning for all the American states. . . . The adhesion of all these states would be impossible, just as it would be impossible for most of the non-American states to adhere to it. The following observations made by the Dutch senator, Baron Wittert van Hoogland, is particularly happy. The introduction into the laws of all countries of provisions protecting minorities would be enough to cause them to spring up where they were least expected, to provoke unrest among them, to cause them to pose as having been sacrificed, and generally to create an artificial agitation of which no one had up to that moment dreamed."<sup>17</sup>

Only one of the states not bound by the treaties had, before 1933, indicated clearly a willingness to accept a League guarantee of the rights of its minorities, namely, Germany. The Reich's delegates to the Assembly had for several years taken it upon themselves to defend the rights of minorities and to urge more vigorous enforcement of the guarantee. In order to accomplish this, they advocated several reforms in the procedure observed by the League in executing its duty as guarantor.<sup>18</sup> In reply, the representatives of the minorities states have professed adherence to the terms of the treaties and expressed willingness to consider any improvements in the system, but always with the significant proviso that all members of the League be placed under the same régime as themselves. German delegates have stated that their government would consent to be so bound.<sup>19</sup>

<sup>17</sup> O. J. 1926, 141-144; 138, 293. The above extract from the statement by the *rappoiteur* is not quoted with approval, but merely as representative of the arguments which have been advanced against generalization, in addition to those used by Wilson and Clemenceau to justify the limited application of the régime.

<sup>18</sup> See particularly, O. J. 1929, Special Supplement 73, German government's letter and statements by German delegate before committee. Also, Minutes of Sixth Committee, cited in footnote 15.

<sup>19</sup> *Ibid.* and O. J. 1933, Special Supplement 120, pp. 42 and 44. In the German government's reply to the Allied and Associated Powers on the occasion of transmission of the peace treaty, during the Peace Conference, comment was made upon the provisions for the protection of minorites and the government expressed its

It was quite natural, therefore, that the members of the League should show a special interest in the remarks of the German government's representative in the 1933 Assembly. In accordance with a practice of several years' standing, the German delegation asked in one of the early plenary sessions that the part of the Secretary-General's report which dealt with minorities questions be referred to the Sixth Committee. At the Committee meeting of October 4, the German representative opened the discussion on the report by repeating in substance the speech which his predecessors had made in the three preceding Assemblies, urging the adoption of measures which would improve the practice followed in dealing with cases brought to the attention of the League. He particularly advocated greater publicity for the work of the special committees to which petitions were referred, granting the petitioner the right to be heard subsequent to the receipt by the committees of the observations on petitions made by the government concerned, and the creation of a permanent commission to assist the Council.<sup>20</sup>

Remarking that the whole problem of protection of minorities is not exhausted with the settlement of questions concerning procedure, the German representative expressed a view which revealed one of the principles of the new German régime: "The question at issue is a spiritual dispute on the principle of nationalities. . . . The attitude of the League and its composite bodies toward the question of the protection of minorities and the discussions which have taken place on subjects of this nature are only symptoms of the intellectual struggle. I think that it is not enough, in the long run, to confine our attention to symptoms; I therefore believe that we must make up our minds to treat the disease." He deprecated the tendency alleged to be discernible in the policy of some states to a more or less forcible assimilation of foreign minorities by the majority of the population and emphasized the importance his government attached to the idea of ethnic nationality. "This avowal expresses the unity of feeling in all those who are bound by common blood or by a common language, and who enjoy the same civilization and customs. The members of a nation or an ethnic group living in a foreign environment constitute, not a total number of individuals calculated mechanically, but, on the contrary, the members of an organic community, and it is thus that, at the bottom of their hearts, they view themselves. They also desire recognition as a group where their rights are concerned. The very fact that they belong to a nation means that the nation in question has a natural and moral right to consider that all its members—even

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intention to accord fair and impartial treatment to minorities in Germany. Miller, *Drafting of the Covenant*, I, p. 548.

<sup>20</sup> For a consideration of these proposed reforms, see the writer's note in this REVIEW, Vol. 27, pp. 250-259 (Apr., 1933), and Stone, *op. cit.*

those separated from the mother country by state frontiers—constitute a moral and cultural whole." Admitting that not all states agreed on the problem of protection of minorities, he proposed that an effort be made by members of the League to agree on "the aspect of principle governing the problem of racial nationality and the rights resulting therefrom for the different groups of racial nationalities."

Aware that his government had been criticized for its policy toward the Jews, and anticipating references to it by other delegates, the German delegate insisted that the Jewish question in Germany was a peculiar problem of race and not a minority problem. The Jews in Germany, he insisted, were not considered, and did not consider themselves, a national minority, and never expressed any desire to be treated as such. "The practice of Judaism is completely free, and the religious question plays no part whatever in the settlement of the Jewish problem in Germany. In Germany, it is primarily a demographical, social, and moral problem, which has been peculiarly aggravated by a mass migration of Jews from Eastern Europe westwards. It is a problem *sui generis*, for which, accordingly, a special settlement will have to be found."<sup>21</sup>

In addition, therefore, to the usual exchange of views concerning reform of the existing system for the protection of minorities, discussion ensued on two other propositions which the German delegate laid before the Sixth Committee: (1) that members of the League should recognize the principle of ethnic nationality and, in consequence, should respect the linguistic and cultural peculiarities of their citizens; and (2) that the Jews do not constitute an ethnic nationality. This was raising the question of generalization in a new form. It was, indeed, substituting a different concept of minority for that which had been recognized in the existing system of protection.

The first proposition was rejected by several delegates who expressed doubt as to the meaning of "ethnic nationality" or who, construing it to mean a social group based on common race and/or common language, denied that race and language are the only factors in social groups to be considered. The second proposition was rejected as being entirely contrary to fact; or, if Jews were denied the character of an ethnic nationality, they were excluded by definition from an artificial social group, for they certainly considered themselves, and were considered by others, as constituting a distinct social group possessing characteristics of an "ethnic nationality," if that term had any meaning at all.

Whatever the views were concerning these propositions, it was clear that there existed a situation which aroused the attention of people throughout the world and which many governments thought should be

<sup>21</sup> O. J. 1933, Special Supplement 120, pp. 22-25.

inquired into by the League. At its May, 1933, session, the Council's attention had been called to the legislation passed in Germany which excluded non-Aryans from the enjoyment of certain civil rights. The petitioner complained that this legislation was incompatible with several articles of the Polish-German convention of 1922 which guaranteed equality of rights to all inhabitants of Upper Silesia. The Council took note of the statement of the German government's representative that the government would apply no legislation which was in conflict with any international conventions to which it was a party.<sup>22</sup> From this it would appear that the German government meant to make no discrimination between Aryans and non-Aryans in Upper Silesia. The governments represented at the Assembly were informed that the discrimination would be made in Germany outside Upper Silesia. It was also clear, therefore, that the situation was of the sort which the minorities régime was expected to prevent, and that this particular one was not covered by the régime. Moreover, the German government itself, through its representative on the Sixth Committee, was directing the attention of the Assembly to the problem of finding adequate measures for protecting minorities. Consequently, new proposals for the extension of obligations to all members of the League were not unexpectedly or inappropriately introduced.

It was to be expected that the minorities states would renew their efforts to place all members of the League under the same obligations toward minorities. The Polish delegate submitted a resolution proposing that the Assembly request the Council to appoint a committee of inquiry to study the problem and to submit to the next Assembly a draft convention defining identical obligations for all members of the League and ensuring international protection of minorities of race, language, and religion. This resolution was supported by the representatives of the minorities states.<sup>23</sup>

Other resolutions were introduced, most of them less far-reaching. Haiti, however, proposed the conclusion of an international convention aiming at the guarantee of the rights of man and of citizens.<sup>24</sup> The British delegate suggested that the Assembly reaffirm the resolution of 1922; and the French delegate introduced a resolution to this effect, the terms of which, however, modified the original resolution in such a way as to make the undertaking legally binding.<sup>25</sup> Only one state actively opposed the Assembly's adopting new measures. The Italian representative declared that those which were directed at generalizing the

<sup>22</sup> The Bernheim case. For a full account of this case, see O. J. July, 1933, pp. 833-849.

<sup>23</sup> O. J. 1933, Special Supplement 120, p. 30 ff.

<sup>24</sup> *Ibid.*, p. 32 ff.

<sup>25</sup> *Ibid.*, pp. 28, 34-37.

obligations were premature and would probably do more harm than good.<sup>26</sup> Since the opposition of one state would be sufficient to prevent the adoption of a resolution, the attitude of Italy, which was unquestionably shared by other states whose representatives chose not to define it, indicated that generalization, or anything approaching it, would not be achieved. The several proposals were finally referred to a sub-committee which reported in favor of reaffirming the 1922 resolution, with the additional provision that the Assembly considers that the principles "must be applied without exception to all classes of nationals of a state that differ from the majority of the population in race, language, or religion."<sup>27</sup>

It is likely that the German situation was merely the occasion for the introduction of the Polish government's resolution and probably also of that of the government of Haiti which embodied the ideas that had received so much attention in the annual meetings of the Institute of International Law. On the other hand, the German situation was undoubtedly the cause of the other proposals. The above-mentioned addition to the 1922 resolution was inserted undoubtedly as a reply to the German delegate's assertion that the Jews did not constitute a minority in the sense in which the term was used in the 1922 resolution. The German delegate opposed the inclusion of the additional provision, and the Assembly concluded its consideration of the minorities question by reaffirming its resolution adopted eleven years earlier.<sup>28</sup>

Although no progress was made toward accomplishing generalization, the discussion in the Fourteenth Assembly was significant. It revealed that a few states whose attitude on this question had not been expressed before were willing to commit themselves to the extent of giving support to the idea of all members of the League being bound by the obligation to observe some standard in their treatment of minorities.

The remarks made by the Swedish delegate are representative of this point of view and deserve quotation. After voicing the opinion that the resolution of 1922 imposed a moral obligation on all members of the League, he continued by pointing to the need of the Assembly evincing its intention to take no backward step. "The time is now drawing near for serious consideration of the possibility and means of converting these principles [embodied in the 1922 resolution] into more far-reaching undertakings. The problem of minorities presents two aspects. There is first the case of a minority belonging to a people represented, and perhaps mainly represented, by an independent state. The other case is that of minorities belonging to a people having no state (Jews, Assyrians, Armenians, and others). The special treaties draw no legal distinction

<sup>26</sup> *Ibid.*, p. 48.

<sup>27</sup> O. J. 1933, Special Supplement 120, pp. 59, 72.

<sup>28</sup> *Ibid.* and O. J., 1933, Special Supplement 115, p. 88.

between these two cases. The Bernheim petition and report adopted by the Council provide a clear example of this.<sup>29</sup> It is, moreover, more than evident that the two cases mentioned above are both covered by the Assembly resolution of 1922. . . . It seems to me well to draw attention to this resolution, and I therefore suggest to the Committee that it should endorse it afresh. Such action would add nothing to the legal obligations already binding states; the decision was taken and the moral obligation entered into more than ten years ago. Certainly no one would wish to take a backward step; we must, on the contrary, frankly ask ourselves whether we are not prepared to take a step forward. I am convinced that we must consider closely and in all seriousness both the possibility and the means of converting the principles already adopted into legal undertakings."<sup>30</sup>

The seriousness of the problem and the persistence of the minorities states in their demand for generalization were made evident again in the Assembly of 1934. The Polish foreign minister, Colonel Joseph Beck, when addressing the plenary session on September 13, announced that his government would no longer coöperate with the League in executing the provisions of the Minorities Treaty unless all members of the League assumed the same obligation.<sup>31</sup> This pronouncement provoked replies from the representatives of several states, including Great Britain, France, and Italy, who insisted that treaty obligations must be respected.<sup>32</sup> The discussion of the problem was transferred from the Assembly hall to the committee room and to the corridors, where the Polish representatives were apparently persuaded to retract.<sup>33</sup>

The application of international protection of minorities to states in which conditions prevail identical with or similar to conditions in the states which have accepted obligations cannot be reasonably opposed. The principle of state equality might be respected by the extension of the same obligations to all states, but the price of such extension would be very great, for reasons stated by the Council *rapporteur*, quoted above. It is objectionable for the further reason that it would probably lead to the existing guarantees becoming entirely ineffective. Governments would be more hesitant to call the Council's attention to violations of the treaties than they now are if all were equally bound. This ought not to be the case, but it probably would be. Less objection can be raised to

<sup>29</sup> Citation in footnote 22 above. <sup>30</sup> O. J. 1933, Special Supplement 120, p. 29.

<sup>31</sup> "Pending the bringing into force of a general and uniform system for the protection of minorities, my government finds itself compelled to refuse as from today all coöperation with international organizations in the matter of the application by Poland of a system of minority protection." He explained to reporters that suspension, and not denunciation, of the treaty was intended. *N.Y. Times*, September 14, 1934.

<sup>32</sup> *Ibid.*, September 15, 1934.

<sup>33</sup> *Ibid.* September 22, 1934.

the proposal that all states accept some obligations toward their minorities without accepting the present régime, which is the aim of the minorities states advocating generalization. While it is undoubtedly true that in every state discriminations on the basis of race, language, or religion sometimes occur, and that abusive treatment of a racial or religious group sometimes happens, it is not true that the situation needing a remedy is equally pressing in all states. When conditions in those states where feeling between different nationalities or different races causes discrimination and occasionally leads to bloodshed and disorder are improved so that the same level has approximately been attained, then acceptance by all states of the same obligations toward minorities might be justified.

Instead of attempting to attain generalization, those interested in ensuring protection for minorities might better concentrate upon the improvement of the present régime with a view to perfecting the machinery in operation for the benefit of minorities. The régime might be considered one of several experiments in international administration on the success of which rests the realization of international government.

No world government exists which can provide security for all persons everywhere. In its absence, it must be admitted that the power possessed by some states is the decisive factor in international relations. It was generally agreed that the transfers of territory and the establishment of new states by the freeing of oppressed nationalities, effected by the exercise of power on the part of the larger states, while just, would produce a situation likely to become dangerous to the peace of the world as well as threatening to the security of members of nationalities formerly occupying a dominant position. The Allied and Associated Powers saw a particular danger and adopted measures to prevent it from becoming imminent.

Within states, the people will tolerate the exercise of power by the stronger elements in the population if it maintains a condition of peace and order, preferring it to anarchy. So long as no government based on the consent of all the governed is possible, power of the stronger will be exercised. It should be remembered that treaties of the nineteenth century contained provisions stipulating rights, especially religious freedom, for minorities in Eastern Europe. These provisions were inserted at the behest of the Great Powers, which assumed some responsibility for their observance. The assumption of responsibility by the League for the treaties concluded at the Peace Conference made the realization of the rights prescribed in the treaties more certain and deprived the Great Powers of their exclusive position.

HOWARD B. CALDERWOOD.

*University of Michigan.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Since the resignation of President Walter Williams, Dean Frederick A. Middlebush has been acting as president of the University of Missouri.

During the first half of the present academic year, Professor Rudolf Laun, of the University of Hamburg, is conducting a seminar in political science, international law, and the philosophy of law at the University of Michigan.

Dr. Harold W. Stoke, of the University of Nebraska, has been promoted from assistant to associate professor of political science.

Dr. John J. George, Jr., has been advanced from assistant to associate professor of political science at Rutgers University.

Professor Leon W. Godshall, recently of Union College, is serving this year as head of the department of history and political science at Dickinson Junior College, Williamsport, Pa.

Professor Hugh L. Elsbree, of Dartmouth College, is at present connected with the Federal Power Commission and is assisting in the preparation of legislative proposals which the Commission will submit to Congress at its next session.

Dr. George C. S. Benson has left Harvard University to become research consultant of the American Legislators' Association, and managing editor of *State Government*. During the fall quarter he is giving the introductory course on public administration at the University of Chicago.

Professor Jesse S. Reeves, of the University of Michigan, is on leave of absence during the first semester. In addition to attending meetings of the Institut de Droit International at Madrid, he is making a trip around the world, visiting the Dutch East Indies and the Philippine Islands as well as China and Japan.

Dr. Taraknath Das, author of *India in World Politics* and *British Expansion in Tibet*, is lecturing on Far Eastern affairs at the Catholic University, Washington, D. C., during the current academic year.

Professor F. K. Krüger, of Wittenberg College, has been invited to serve as American guest lecturer at the Deutsche Hochschule für Politik in Berlin during the winter semester.

Dr. Kenneth O. Warner, recently appointed director of the Arkansas Municipal League, has been promoted to associate professor of political science at the University of Arkansas.

Mr. William H. Allen, since 1915 director of the Institute for Public Service in New York City, became secretary of the New York City civil service commission on September 1.

Dr. Harlow J. Heneman, who received his advanced degree from the University of London in June, has been appointed to an instructorship at the University of Michigan.

Mr. Joseph E. Kallenbach, formerly an instructor at Iowa State College, has been appointed teaching fellow in political science at the University of Michigan.

Dr. Fritz M. Marx, of Princeton University, is in charge of the graduate course in municipal government and administration at New York University during the current academic year.

Dr. Robert J. Harris, Jr., who received his advanced degree at Princeton in June, has been appointed instructor in political science at the University of Cincinnati.

Dr. David Fellman, for the past two years a graduate student at Yale, has been appointed instructor in political science at the University of Nebraska.

Dr. Harry M. Satterfield, who received his advanced degree in political science from the University of Nebraska, has been promoted to assistant administrator in the FERA unit in Nebraska.

Dr. Charles W. Smith, Jr., who received his advanced degree at the University of Wisconsin during the summer, has accepted a teaching position at Rutgers University.

During the absence of Professor Frederick H. Guild, Professor Walter E. Sandelius is acting as head of the department of political science at the University of Kansas.

At Hamilton College, Dr. J. Q. Dealey, Jr., has been advanced from assistant to associate professor.

Mr. Hiram M. Stout, assistant professor of political science at DePauw University, received his doctor's degree from Harvard University in June and spent the summer in London studying aspects of British administration.

Dr. Harold Zink, professor of political science at DePauw University, has returned from a year's leave of absence spent in the Far East.

Mr. Donald C. Stone, director of the Public Administration Service, Chicago, was recently appointed executive director of the International Association of Public Works Officials and of the American Society of Municipal Engineers, both organizations having established new headquarters at 850 East 58th Street, Chicago.

At the meeting of the International Association of Governmental Labor Officials in Boston during the last week of September, Professor Leonard D. White, of the U. S. Civil Service Commission, delivered an address on the problem of administrative personnel. He participated also in conferences which led to a revision of the constitution of the Civil Service Assembly and to a decision to establish a headquarters office in Chicago.

Professor Jerome G. Kerwin has succeeded Professor Leonard D. White on the Social Science Research project dealing with the relation of school boards to city governments carried on at the University of Chicago by the school of education in conjunction with the department of political science.

There has been created at the University of Michigan a bureau of reference and research in government, with Mr. Harold D. Smith, director of the Michigan Municipal League, in charge.

Dr. Carroll K. Shaw, who completed his graduate work in public administration at the University of Illinois in 1933, and has since been with the Federal Emergency Administration of Public Works, has recently been appointed administrative assistant to the director of the Inspection Division. He has been assigned the duty of working out improved administrative methods and organization for this rapidly-expanding unit of the Administration with a view to making as effective as possible the enforcement of compliance with Public Works Administration requirements on the part of borrowers and contractors.

In appointing a special advisory commission on constitutional revision, Governor Clarence D. Martin of Washington included two political scientists—Professors Claudius O. Johnson, of the State College of Washington, and Joseph P. Harris, of the University of Washington. The commission will specially consider changes in the state constitution which are necessary to modernize state and local government. At a preliminary meeting in October, it went on record in favor of a unicameral legislature.

Dr. Roy V. Peel, associate professor of government and acting director of the Division of Research in Public Administration in Washington Square College, New York University, has been granted leave of absence from the University for the current academic year to conduct a survey

of public administration in the Scandinavian countries. The study will be made for the Institute of Public Administration, which received a special grant from the Spelman Fund to finance the project. Dr. Peel's post as acting director of the Division will be occupied temporarily by Professor Rinehart J. Swenson, chairman of the Washington Square College department of government. Mr. Howard P. Jones, secretary of the National Municipal League and editor of the *National Municipal Review*, and Mr. Russell McInnes, a member of the division of research in the municipal bond department of Lehman Brothers, New York City, have been appointed lecturers in government to take charge of some of Professor Peel's work.

American representatives at the meeting of the Institute of International Law held at Madrid October 15-25 included Dr. James Brown Scott of the Carnegie Endowment for International Peace, Messrs. Frederic Coudert and Arthur Kuhn of New York City, and Professors Jesse S. Reeves of the University of Michigan and Philip Marshall Brown of Princeton University. Topics discussed at the conference included the creation of an international office of marine waters, international rivers and bodies of water, reprisals in time of peace, and the recognition of new states and governments.

The highly successful public forums conducted in Des Moines, Iowa, under control of the board of directors of the city schools and guided by Dr. Carroll H. Wooddy, formerly of the University of Chicago, have entered upon their third year. Among visiting lecturers and leaders will be Professors Peter H. Odegard, of Ohio State University, and Herbert Phillips, of the State Teachers College of Fresno, California, and Messrs. Hubert Herring, Leon Whipple, and Chih Meng, of New York City.

The second annual Midwest Police Conference traffic school, conducted jointly by Northwestern University and the Evanston police department, was held at Northwestern University through a period of two weeks in October. Both class work and field work were provided, the Evanston police department being used as a laboratory.

About one hundred city managers and an equal number of mayors, department heads, and other officials attended the twenty-first annual conference of the International City Managers' Association held at St. Louis on October 15-17. The topics discussed included problems of public utility management, city-federal relationships, maintaining contact with the public, police and strikes, city managers' responsibility for forced budget reductions, and matters pertaining to financial and personnel administration.

Civil service commissioners and staff members of personnel agencies met in Chicago early in October for the annual conference of the Civil Service Assembly of the United States and Canada. Considerable interest was shown in apprenticeship training and in encouraging employees to take further university or high school training on the job. Much emphasis was placed also on "selling" the work of personnel agencies to the general public. Mr. Clifford N. Amsden, of the Los Angeles county civil service commission, was elected president of the Assembly.

The fifty-fourth annual meeting of the Academy of Political Science was held at the Hotel Astor, New York City, on November 9. The general subject was the stabilization of peace, and among those who appeared on the program were Hon. Owen D. Young, Hon. Newton D. Baker, ex-Senator Hiram Bingham, Professors Charles Cheyney Hyde and James T. Shotwell, and Messrs. Allen W. Dulles, Frederic R. Coudert, Charles Warren, Raymond B. Fosdick, Francis B. Sayre, and Stephen P. Duggan.

Consideration of the tax programs of the forty-eight states and the federal government as a unified whole, instead of dealing individually with the important taxes subject to conflict, will be a new method of approach in the study of tax problems by the Interstate Commission on Conflicting Taxation. Heretofore, the Commission, set up over a year ago by the Interstate Assembly, has studied conflicting taxation mainly through examination of the individual types of taxes, such as gasoline, tobacco, income, and death taxes. The new viewpoint is an outgrowth of a conference which the Commission held recently in Boston. Early in 1935 the Commission's research staff will report on the probable revenues for the federal government and for each state under various possible plans of coördinated taxation.

The annual meeting of the American Municipal Association was held at the University of Chicago on October 25 to 27. Delegates from thirty-three state leagues of municipalities discussed relief, taxation, professionalizing the municipal service, low-cost housing, and the rôle of cities in national planning. Among the speakers were Mr. Aubrey Williams, assistant federal relief administrator, and Professors Charles E. Merriam and Luther Gulick. The annual conference of the United States Conference of Mayors was held also at Chicago on November 22-24. Speakers included Dr. A. A. Berle, Hon. F. H. LaGuardia, Hon. Daniel W. Hoan, and Mr. Harry L. Hopkins. The chief subject of the conference was the problem of unemployment relief.

A fundamentally new relief program assigning to the federal government complete responsibility for the care of the employables of the

country and to the cities and states the task of caring for the unemployables was suggested by Paul V. Betters, executive director of the United States Conference of Mayors and the American Municipal Association, at the convention of the International City Managers Association held in St. Louis at the middle of October. In summary, the proposal is: (1) that the eighteen million people now on relief be divided into two general classes—employables and unemployables; (2) that the national government take complete responsibility for care of the employables—those able and willing to work—under a work program; (3) that major emphasis in this work program be given to building low-cost housing; and (4) that cities and states assume complete responsibility for caring for the unemployables—those dependent because of old age or mental or physical defects. Mr. Betters pointed out that, after fifteen years of experimentation, Great Britain has adopted a plan of financing relief needs embodying substantially these principles.

The American Council of Learned Societies has recently announced that it is prepared to extend assistance to the publication of a limited number of works in the humanities by American scholars, and has invited its constituent societies to propose works suitable for such assistance. It also reserves the right to consider works submitted to it "by others than constituent societies." Proposals from constituent societies must be submitted to the executive offices of the A.C.L.S. on or before January 5, 1935, and "earlier if possible." Arrangements are under way for the consideration of manuscripts to be submitted by the American Political Science Association, and persons who have, or know of, worthy manuscripts in the field of political science are invited to communicate promptly with the chairman of the sub-committee on publication of the Committee on Policy, Professor F. W. Coker, Yale University, New Haven, Connecticut. "Works proposed for publication should be complete works, preferably the results of constructive research presented in the form of volumes of conventional size. Important tools of research and critical editions may also be proposed."

The seventh annual convention of the Southern Political Science Association was held at the Biltmore Hotel, Atlanta, November 1-3. The attendance was unusually large, and in addition to the regular membership, Dean W. J. Shepard of Ohio State University and Professors Clyde L. King of the University of Pennsylvania and A. N. Holcombe of Harvard University were present. The program included round-tables on International Relations, led by Robert Wilson of Duke University; The New Deal and the Constitution, led by Irby R. Hudson of Vanderbilt University; The Tennessee Valley Authority, led by F. W. Prescott of the University of Chattanooga; Primary Elections of the South in 1934,

led by Charles W. Pipkin of Louisiana State University; and The Philosophy of Government, led by Nick P. Mitchell of Duke University. Formal addresses were given by Dean Shepard, Dr. King, Dr. Holcombe, and Professor E. B. Wright of the University of Alabama, the president of the Association for 1934. Officers elected for 1935 are: president, Dr. John W. Manning, University of Kentucky; first vice president, Dr. A. B. Butts, Mississippi State College; second vice president, Dean Charles W. Pipkin, Louisiana State University; corresponding secretary, Professor Glenn Rainey, Georgia School of Technology; and recording secretary, Dr. Frank W. Prescott, University of Chattanooga. On November 2-3, a conference on civic education, sponsored jointly by the Southern Political Science Association and the sub-committee on political education of the Committee on Policy of the American Political Science Association, was held at the Biltmore Hotel.

**Personnel Questions of Interest to the Political Scientist.** The sub-committee on personnel of the Committee on Policy of the Political Science Association would like to obtain information concerning courses offered by political science departments on the scope and methods of political science. It will be recalled that in the Anderson report on "Teaching Personnel in American Departments of Political Science"<sup>1</sup> there is a discussion of the importance of developing such courses as part of the training of political scientists for teaching positions. Such information might usefully include an outline and bibliography of the course, with any other descriptive data that may seem relevant to the instructor. Information is desired also concerning the program and organization of training schools for the public service. Requests for information concerning both questions have been coming to the committee, which hopes to serve as a central depository for such material as may be useful to members of the Association. Communications may be addressed to the chairman, John M. Gaus, South Hall, University of Wisconsin, Madison, Wis.

The committee also desires to remind members of the Association that the two new types of fellowship grants lately established by the Social Science Research Council should be kept in mind by political scientists. One type of fellowship is designed to encourage students of high quality who are completing their undergraduate courses to undertake graduate work in the social sciences. The other offers opportunity to students well along in their graduate work to obtain access to materials or persons especially important in the development of the student's work or training.

The memorandum which follows was prepared, at the request of President Shepard of the Association, by the sub-committee on personnel. The members of the sub-committee during the year 1934, all of whom

<sup>1</sup> See this REVIEW, Vol. 28, No. 4 (August, 1934), pp. 726-765.

participated in the preparation of the memorandum, are William Anderson of the University of Minnesota, Phillips Bradley of Amherst College, John M. Gaus of the University of Wisconsin, Luther Gulick of the Institute of Public Administration, and Charles McKinley of Reed College. Mr. Gaus, present chairman, and Mr. Anderson, first chairman of the committee, appeared before the Commission of Inquiry into Public Personnel at its public hearing in Minneapolis, Minnesota, on November 8 and 9 as representatives of the committee. The director of the Commission is Dr. Luther Gulick, and among its members are Professor Charles E. Merriam of the University of Chicago and Mr. Louis D. Brownlow, director of the Public Administration Clearing House.

MEMORANDUM SUBMITTED TO THE COMMISSION OF INQUIRY ON PUBLIC  
SERVICE PERSONNEL, NOVEMBER 1, 1934

1. *Introductory Note.* Various points of view concerning political questions are naturally to be found among American political scientists, who do not attempt to formulate, through their Association, any common policy concerning current issues. Nevertheless, for two reasons the nature of their professional activities places upon them an obligation to submit some general considerations of the public service problem to your commission. Political scientists, through their acquaintance with students, observe the influence of standards and procedures in and of ideas concerning the public service held in the community upon student attitudes toward civic obligations and career opportunities. In addition to this, a large number have from time to time served in governmental agencies, and also have conducted research on administrative problems related to or identical with those which your commission is investigating. The views set forth in this memorandum are not official declarations of policy urged by the Association; but they do represent generally accepted deductions from the observations and experience of political scientists as clarified by their extensive discussion of these matters in print and conference over the past half-century.

2. *The Political Setting.* The American problem of the public service has naturally certain peculiarities. Unlike most other states of the world, we have a continent to govern, with diverse geographic regions and a population of diverse racial and cultural origins. No single metropolitan capital with a concentrated national leadership in journalism, finance, industry, commerce, or the professions serves as a focal point in the formulation of political opinion and the sifting of political and administrative policies and standards. The importance of positions of party leadership associated with the government of the day, corresponding to the posts of party leadership found in parliaments and ministries in European states, must therefore be recognized. Such leaders serve as the human and symbolic embodiment of the general policy and outlook of a government

which might otherwise seem dangerously remote. Such symbolism is important as a stabilizing factor in the process of social change, when essential developments of policy and changes in objectives may be jeopardized because of the lack of adequate personal political leadership to interpret and give personal backing and support to the necessary new policies throughout the country.

3. *The Administrative Needs.* But the major portion of governmental activity necessarily requires the knowledge and insight that come only with adequate educational preparation, relevant experience, and the consciousness of professional standards that must be maintained and furthered. The success or failure of the policies advanced by responsible party leaders and the effective integration of sectional requirements into a national program rest upon honest, intelligent, impartial administration. A society that pays even lip service to the idea of democracy will insist upon two practical measures in this connection:

- A. Recruitment of these services, upon which a decent standard of living is increasingly dependent, should be based most broadly on all the population regardless of religion, party, race, place of residence, or other factors irrelevant to the central requirement of capacity to do good work in the public service.
- B. The public is entitled to obtain greater returns from the vast system of elementary, secondary, and higher education which it provides free or with small charges to the students who use it, by securing in some regular and recognized form an increased amount of the service of the best products of this system.

4. *Equality of Opportunity.* Both of these general statements require specific measures for their adequate application. For example, many American communities are deliberately endangering their standard of living as protected by health officials and other public officers because of an insistence on a local residence requirement. We hope that your commission will point out to the public the illogical and self-punishing nature of the frequent rejection by state and local governments of an all-American basis for recruiting, regardless of class, party, race, residence, or religion, and regardless of capacity and honesty for the employees of our local, state, and national governments. The merit system, and a clearer recognition of the usefulness of secondary school, college, and graduate school records as evidence of fitness for various positions, are essential instruments for insuring democratic equality of opportunity, and should be extended widely in areas in which they are not now applied.

5. *The Use of Our Educational Resources.* A practical example of the application of the second general principle may be useful. The public is too little aware of the splendid professional, scientific, and other specialized governmental services which have developed in this country in the

past fifty years, through the coöperation of governments, educational institutions, and professional societies and organizations. For example, the many great scientific staffs of the Department of Agriculture come to mind, and the achievements of municipal departments upon whose adequate dealing with complex questions the welfare of millions may depend. But the immense probléms thrust upon government by the collapse in business, commerce, finance, and industry in recent years illustrates the great need for increased emphasis on the functions of coördinating those services, forecasting costs and consequences, and taking long-time views in matters of population trends, sources of revenue, and developments of all kinds. Here there is no single type of professional preparation such as is provided in a school of forestry, agriculture, public health, library administration, or social welfare administration. Special training must come partly on the job in governmental work that helps the alert apprentice to obtain insight into the interrelations of functions and the problems of coördination and control. A selection of a fair sampling of the most able young men and women who have been given by American society the opportunities for development in our educational system should be brought into the national, state, and local service more regularly than at present and under conditions which will better awaken them to their civic obligations.

6. *Recommendations: Classification and Recruitment.* The practical implementing of such a program is indicated by scattered developments already under way in various governmental and governmental research offices in this country. By designating a class of positions in the civil service recruiting classification marked by duties of general administrative staff assistance to experienced officials, by examining for these positions on the basis of general personal capacity and the use made of educational advantages offered in our system, by paying a modest living wage, and by offering a fair chance to compete for promotional posts in general administration with those entering the service in other classes of positions, we can do much to end our present waste of ability and civic interest and establish a more democratic method of obtaining a good quality of service for the nation. We hope that your commission, with its opportunity of taking a wider view of developments in government and economic life, will call attention to the neglect of this coördinating and general administrative function (a neglect as marked in economic life as in government) and press the case for recruiting a fair share of intelligence and ability for meeting this need.

7. *Recommendations: An Administrative Staff College.* We commend to your consideration also the fact that several special and professional services have secured, in the national government, staff colleges in which their problems can be studied and administrators given special training for dealing with these problems. Arrangements are made also for sending

members of these staff colleges to institutions here and abroad for special research and observation which adds to their value in the public service. Typical of these staff colleges are the Army and Naval War Colleges, the Army Industrial College, and the Army and Naval Medical Colleges. We believe that with the increasing importance of problems of forecasting, coördination, finance, and general administration a civilian administrative staff college will be essential. Provision should be made for sending to this college for periods of research and special training not only members of the national civil service but also local and state officials, in view of the development of coöperation of all levels of government in the administration of various functions. Provision should also be made for assignment to institutions here and abroad for special training and research as already practiced in the existing staff colleges. The requirements of general administrative direction and control are at least as rigorous and difficult as those of any one administrative service, and it is time to recognize this in adequate staff institutions which serve to improve general administration.

*8. Recommendations: An Auxiliary Civil Service.* Finally, we hope that your commission will call to the attention of the public the appearance of a new supplementary or auxiliary public service in the secretaryships of civic organizations, and more recently on the staffs of trade associations and code authorities. Just as the German "cartel leaders" were found to be more adequate for their posts if trained in administration, public law, and economics rather than in the techniques of their respective industries, so we are finding that the problems of a code are interdependent with the whole economic, social, and political structure. The failure to foresee this growing interdependence, indeed, is a prime cause of our post-war difficulties. The problem of recruitment and training of the men and women to be employed in these organizations has therefore marked resemblance to that of the public service, and we believe that your commission may well call upon our educators to recognize this.

*9. Conclusion.* In brief, we believe that the public service will benefit from being thrown open more widely on a democratic basis. Such a program will bring a better return for the expenditures on education in this country, and will break down some of the existing party, local, and other barriers to the best use by the American people of their human resources. It is important that a more widespread public opinion be rallied for such an application of the American ideal to the personnel system throughout our government. But equally important, and indeed a part of the task of stimulating and rallying public opinion, is the indication of tangible procedures, methods, and policies to be adopted in order to make these ambitions a reality. It is here that we believe your commission has a unique opportunity for educating both the public and administrators, and it is for this reason that we are submitting these concrete proposals.

## BOOK REVIEWS AND NOTICES

*Law-Making in the United States.* By HARVEY WALKER. (New York: The Ronald Press Company. 1934. Pp. 495.)

Famous as a nation of law-breakers, the United States is equally noted as a nation of law-makers. We know, of course, that we are not really as unbridled as we try to convince ourselves that we are. We view ourselves in distorting mirrors; we produce preposterous statistics concerning the number of statutes that our legislatures enact during a year, by mislabelling as a "statute" every appropriation, every petty revision, every local and temporary measure. And we produce even more erroneous impressions when we call every act of a city council an "ordinance." But even if we take the figures with a bulging bucket of salt, the 1933 balance-sheet gives evidence that lawmaking in this country is a thriving business, if not a fine art: 600 federal laws produced during the last session; 7,000 new state "statutes"; and Heaven knows how many newborn municipal "ordinances." The enormous annual output of these ordinances can be left to the imagination when we proudly survey over fifty American cities with populations of 100,000 or more—and over 3,000 others with populations of 2,500 or more.

Professor Walker's new volume describes and explains the processes of our federal, state, and local legislative factories. The purpose of the book is to outline the hierarchy of law in the United States, and to describe the relationship of each type of law to the other types in our system. To accomplish this, the author divides his study into three parts. The first deals with both federal and state constitutions, and with the process by which they are originated, amplified, and revised. The second concerns the making of statutes, and discusses representative assemblies—national, state, and local. The final part is devoted to the use of the initiative and referendum and to lawmaking by executives, by administrative agencies, and by judges.

Within the first ten pages, the author plunges into a discussion of federal centralization, which he describes as "a progressively more complete occupancy by the federal government of the field of action described for it in the Constitution," thus comforting the New Dealers. He advises states-righters that such a shift of authority from the state to the federal government should not be "legally called a usurpation." Some of the citizens who frown upon the extent of the authority which has recently been assumed by the federal government may not agree as to the point at which federal "usurpation" begins. Perhaps it would be easier to reconcile the atheist and the bishop as to theology.

The author also devotes a considerable number of pages to the subject of constitutional conventions—a particularly timely topic in view of the number of states that voted this autumn on the holding of such conventions. State commissions and citizens' organizations which are sponsoring proposals for constitutional conventions in California, Georgia, Illinois, North Carolina, Pennsylvania, and West Virginia should find this chapter a useful manual for ready reference. Few textbooks on American government or legislation have so thoroughly treated this relatively infrequent process of American government.

The introductory chapter in Part II is an excellent synthesis entitled "The Formulation of Public Opinion." The reviewer found those pages concerning "the legislative mind" especially readable. Here is a real, although a brief, description of legislative life, and Dr. Walker should be complimented for avoiding the usual error of wholesale condemnation of the part played by lobbyists and by the special interests which they represent. To offset the influence of the pressure groups, Professor Walker urges that legislative reference bureaus be established in all of the states in order to furnish legislators with the uncolored facts and the research material needed for intelligent lawmaking—a position in which he has the support of the American Legislators' Association and its Interstate Reference Bureau.

His description of the work of the state legislative reference bureaus in Chapter X is timely and forward-looking. The legislative reference movement is certain to spread, and the author's treatment of this interesting development is well worth reading.

Professor Walker emphasizes the strength and importance of the lobby by recalling a study made under his direction concerning the sources of bills introduced in the state senate in a recent session of the Ohio general assembly. Of the 267 bills introduced, 70 had their origin with legislative committees and individual members, 78 originated with governmental officials in departments, and the origin of 119 was traced to private interests. About one-third of the privately inspired bills became law.

For decades, many students of government have urged the unicameral system as a potent remedy for legislative ills. Even those unicameral advocates who recognize the fact that the problem of personnel is more fundamental than the problem of structure believe that the one-house legislature would go far toward improving the personnel. The author of this review has discussed this topic with many professors of political science and with many legislators of comparable intelligence and intellectual integrity. He concludes that it is a striking fact that the professors are almost unanimously in favor of the unicameral legislature and that the legislators are almost unanimously skeptical. Although Professor Walker's presentation of the one-house plan is relatively unbiased, he

quotes at length from studies which illustrate the shortcomings of bicameralism without calling attention to the studies which take the opposite viewpoint—and which analyze the failure of unicameralism when it was used in Georgia, Pennsylvania, and Vermont.

Of course, a combined textbook and reference-book of this character is partly a task of authorship and partly a work of compilation, and usually such a volume goes through many months of revamping and revision after its subject-matter is practically completed. This book is no exception to the general rule, and consequently it does not enlarge upon the subject of lawmaking under the New Deal; the current executive and administrative assumption of legislative powers might be more extensively discussed in a book begun today; and the many significant legislative investigations—both state and national—which have been made since 1932 might be given more space. But a study of government resembles a study of the stock market. The author is rather a photographer than a prophet; and Professor Walker has made a serviceable contribution to the literature of lawmaking.

HENRY W. TOLL.

*American Legislators' Association.*

*Uniform State Action.* By W. BROOKE GRAVES. (Chapel Hill, N. C.: University of North Carolina Press. 1934. Pp. xii, 368.)

With great and commendable industry, the author of this book has brought together and carefully digested material relating to an astonishingly large number of agencies whose work, in varying degrees, tends to bring about some measure of uniformity in state action. Some of the topics covered in E. D. Fite's *Government by Coöperation* (1932) are necessarily discussed, but there is no serious duplication.

Two brief introductory chapters explain the need for uniformity of state action and how, in a limited way, the national constitution and government contribute to such uniformity. These chapters are followed by two that deal with uniformity through state legislation. Here appear brief, and generally fair, appraisals of the work of the National Conference of Commissioners on Uniform State Laws, the American Legislators' Association, the American Law Institute, and the American Judicature Society. The major part of the book has to do with a dozen groups of state agencies that are working for uniform action through the coöperation of state administrative agencies—some on an extended scale, others along less ambitious lines. A brief chapter on the limited possibilities of uniformity through judicial coöperation is followed by two chapters in which the author comments discriminately upon the tendency toward federal centralization, and stresses with commendable moderation the possibility—though not asserting the probability—that

centralization can be avoided or checked if the states are sufficiently alert in the discharge of their duties and responsibilities, and enter whole-heartedly into the development of "a national plan" of coöperation in all the legislative and administrative fields where uniformity is "definitely recognized as being essential."

In concluding his useful and well-written study, the author submits a five-point plan to hasten uniformity. (1) Efforts should be made to stimulate more interest in the idea of uniformity among public officials both legislative and administrative. (2) A national council of state administrative officials should be created to devise ways and means of furthering uniformity. (3) Close and harmonious coöperation between organizations striving for uniformity is indispensable. (4) Without violating the proprieties, the members of every state court of record should be kept informed concerning the nature and purposes of the uniformity program. (5) An extensive educational campaign in the interest of uniform state action should be inaugurated. Appendices give a list of 150-odd national and sectional organizations of state administrative officers, and also the constitutions and by-laws of five representative organizations.

Despite the skillful marshalling of this impressive array of agencies working for uniformity of state action, the reviewer closes the book more convinced of the inevitability of national centralization than of the effectiveness of the plan suggested for avoiding it.

P. ORMAN RAY.

*University of California.*

*Federal and State Control of Banking.* By THOMAS JOEL ANDERSON, JR.  
(New York: The Bankers Publishing Company. 1934. Pp. 514.)

Professor Anderson's book deals with governmental regulation of banking in the United States, and emphasizes the difficulties of governmental regulation in a federal system. The book is written by an economist, but deals with the political aspects of a subject that contains economic and political phases. It treats primarily of control over banking, and only incidentally of control over money, some discussion of currency being necessary because of governmental utilization of banking institutions as media of currency issue.

The emphasis throughout the book upon bank deposits as a form of money should be helpful to those who studied their economics in the last generation, and so ought the emphasis upon banks in our modern system of exchange currency. Constitutional and political questions receive the major portion of the author's attention, however, and the main interest of Professor Anderson is that of showing that a unified banking system under national control is politically and economically desirable, and that it is constitutionally possible.

An adequate summary of the historical development of banking, based upon the standard works, brings out the point that both the first and second banks of the United States were very useful banking and governmental institutions. The historical summary also leads to the conclusion that the conflict between federally chartered and state authorized banks has not abated, being about as bitter now as it ever has been. The country has tried federal banks with but few state banks, federal and state banks, state banks alone, national and state banks, and now state banks, national banks, and federal reserve system banks that include all national banks and some state banks but only a minority of all of the nation's banking institutions. Chapters IV-VI are perhaps of the greatest interest to political scientists, dealing with national-state conflicts under the federal reserve system that arose in connection with par remittances, trust work, and state taxation of shares of stock of national banks. In these three chapters, the federal system is seen at its worst, with economic, political, and constitutional confusion and struggles making a very blurred picture indeed.

The several possible constitutional bases for a unified national control over a banking and currency system are examined at some length in the closing chapters of the book, and although some of the discussions are a little drawn out, such as that of interstate commerce, they are generally sound, and in conclusion all come to the same end, namely, that Congress can constitutionally take over control over all commercial banking institutions in this country.

Professor Anderson has written a very useful book and has done it well. It is the kind of a book that political scientists ought to read. Much of the work represents a careful and competent summary of currently available materials, but some portions of it represent original work. Teachers of constitutional law, American government, and government and business will find the volume worth their time.

OLIVER P. FIELD.

*University of Minnesota.*

*Das Englische Kabinett System.* By HERMANN SAVELKOULS. (Munich: C. H. Beck. 1934. Pp. 436.)

It is not often that students of British government can turn to books on this subject written by Continental Europeans. Frequently, the contributions in this field made by the writers of Germany and Austria, for example, have been more in the nature of formalistic *Staatsrecht*, and not political science as Americans understand that term. Mr. Savelkouls, however, has written a useful book in which he gives an account of the cabinet system in England, using the methods of the political scientist.

He deals with the history of the cabinet system, the selection of the prime minister, the party system, party organization, democracy in England, the power of the cabinet, government, administration, legislation, limits on the power of the cabinet, and concludes with a discussion of the conventions of the constitution. The author uses the historical, descriptive, and comparative methods in treating these topics. Frequent references are made to practices in Germany, France, and the United States. Unfortunately, the references to the latter indicate that the author, in common with many Europeans, has not a thorough knowledge of American government and politics.

Mr. Savelkouls is full of praise for the way in which the English government has developed; in particular, for the manner in which the cabinet system has functioned. The reasons for his admiration are mixed. One is that most of what is good in British government is said to be of Germanic origin and is, therefore, Nordic and not Latin. The author contrasts what he considers the success of the parliamentary system in England with its failure on the Continent. The system has succeeded in Britain largely because there have been no fundamental differences between political parties. The various political organizations have thought and acted in national terms. They have not insisted upon the realization of their own selfish ends. The author feels that even the Labor party has been bound by tradition in this regard, although he points out that this party is now showing a tendency to "fill its knapsack with Continental theories." With a two-party system, and with political groups acting for the national welfare, the cabinet system has worked well. But on the Continent in general, and in Germany in particular, political parties have not shown either the ability or the desire to think in broad terms. The result has been that democratic parliamentary government has disappeared in the confusion of conflicting party interests.

The author finds that the British cabinet system has functioned well, even though the peculiarities of the country's electoral system have often made for unfair results at the polls. Notwithstanding these inequalities, he feels that the British should not replace the existing electoral procedure with any type of proportional representation. Germany's experience with that device, he considers, should serve as a warning to any countries contemplating its introduction.

According to Mr. Savelkouls, Hitler's Third Reich is not the only place where the "leadership principle" (*Führer Prinzip*) is one of the fundamentals of government. This principle is of Germanic origin and exists in Britain as well as in Germany. In the British system, it is the prime minister who is *der Führer*, and the people are his "followers." The author's laudatory comments concerning the "leadership principle" would no doubt be approved by a Koellreuter or a Carl Schmitt, but this

comparison of Hitler's position in German government with the prime minister's position in Britain is a strained one.

There are several errors of fact and of dates, but they are of a minor character. A brief bibliography is included, but an index is unfortunately missing.

HARLOW J. HENEMAN.

*University of Michigan.*

*British Public Utilities and National Development.* By MARSHALL E. DIMOCK. (London: George Allen and Unwin. 1933. Pp. 349.)

For advocates of national economic planning and professional students of public administration alike, this able survey of British public service undertakings is of timely importance. In the author's own words, his study represents an effort to "re-unite economics, public administration, law, and philosophy" in describing and appraising the wide variety of experimentation in which the British state is engaged in the search for institutional formulae that will combine progressive technical management with effective social control in the public utility field. Based upon extensive first-hand observations, the investigation includes in its scope both local and national public utility enterprises, primary emphasis being placed upon the railways, road transport, telegraphs and telephones, electricity generation and distribution, and radio broadcasting.

In a study covering so broad a sweep as this, the author's admitted purpose was rather to compare for the layman the merits of the major types of public management and control evolved by British administrative ingenuity than to attempt an intensive analysis of their technical operation. Although the presentation of so wide a range of intricate subject-matter might have been materially aided by some use of organizational charts or diagrams, the reviewer has nothing but admiration for the skill with which the investigator was able to bring unity of interpretation to his task.

As one follows Professor Dimock's story chapter by chapter, the important differences between British and American experience in dealing with the public utility problem clearly emerge. The reader is made to realize how much easier it has been for the British to tackle the problem pragmatically than has been the case in this country. Legislative supremacy and the absence of constitutional federalism have permitted Parliament to "grant any powers or impose any restrictions it pleases upon public service undertakings, and, unlike the United States, the courts will not nullify the legislator's control." The British railways, for example, have been regulated, none too successfully, by the establishment of legislative standards and the creation of a supervisory rates tribunal; the telegraph and telephone services have, on the whole, been admirably

operated by a government department under Treasury control; while in the recent development of national electricity planning and radio broadcasting the device of the "public utility trust" (independent public corporation) has been utilized. It is this last type of control which, in the author's judgment, appears for the time being to hold the greatest promise. It is "capable of considerable variation" and "combines elements of socialization with aspects of private management, initiative, and elasticity that should be preserved."

Not the least suggestive of Mr. Dimock's discriminating observations are contained in his concluding chapter. Here he postulates a tentative philosophy of public service management for the future. Its essential elements embrace (1) the necessity for rediscovering the guild idea of coöperative control; (2) the adaptation of civil service methods to non-profit, commercial enterprises; and (3) the evolution of suitable public relations techniques (advertising and salesmanship if you will) to socialized public service undertakings. "Freedom of detailed administration [from Treasury domination and irrelevant Parliamentary interference], coupled with unified responsibility for general policies—this is the desirable formula" (p. 318).

It is not without significance that the Roosevelt Administration has recently sent to England some of its planning experts (notably Director Lilienthal of the TVA) to observe at close range the quiet but steady progress toward the planned use of national resources which has since the war been furthered by a succession of British governments, conservative and otherwise. Professor Dimock's volume constitutes an indispensable general introduction to the social implications of this development.

WALTER R. SHARP.

*University of Wisconsin.*

*Egypt Since Cromer.* By LORD LLOYD. Volume II. (London: Macmillan and Company. 1934. Pp. viii, 418.)

In this second volume of *Egypt Since Cromer*, Lord Lloyd continues the story of Anglo-Egyptian difficulties from 1919, when the Milner Mission commenced its investigations. In an introductory note, he pauses to deplore the weak foolishness of recent British policy toward Eastern peoples: the benevolence grounded on knowledge and experience which should be the basis of British relations with the masses in Egypt or India or Palestine was being discarded in favor of "a Western schoolman's theory"—self-determination. What could be more dangerous than the principle of universal democracy? "Are the Chinese peasants rejoicing in their new-found freedom and independence?" The masses want not independence; "they do not understand the machinery by which our constitutions work: they neither comprehend nor sympathize with the

doctrine of responsibility." The real problem is administrative, not political. "The first duty, almost the only duty, of government is good administration. It has no responsibility for the forcing of constitutional development." But unfortunately a "hypnotic state induced by the constant repetition of transatlantic doctrines" had prevailed. Britain had by the Declaration of 1922 recognized, with reservations, the independence of Egypt instead of adopting the penetrating, brilliantly simple and logical suggestion of Lord Allenby. I would suggest, wrote Allenby, that Turkey should "be required to cede to H. M. G. all prerogatives and authority over this country formerly enjoyed by the Sultan as suzerain . . . a right of suzerainty based on conquest would have considerable moral [sic] authority. . . ."

The result of self-determination was confusion. The first fruits of the harvest were only sullen dissatisfaction and hostility. The aftermath was dreadful: political murders, culminating in the assassination of the Sirdar, Sir Lee Stack, in November, 1924.

In 1925, Lord Lloyd was selected to succeed Lord Allenby as High Commissioner. Lloyd had disapproved of the Declaration of 1922, but accepted office determined to support it. His emphasis, however, would "leave no doubt in any minds that whilst the measure of independence granted under the Declaration must be real, the reservations and Egypt's respect for them must be equally real and our intention to see them respected made evident." There should be a deeper recognition of Britain's "responsibilities"; Lloyd is fond of the word.

The story of Egyptian politics, of Zaghlul, of Adly, Sidky, Ziwar Pashas, is told in simple, lucid, frequently beautiful prose. The several Anglo-Egyptian negotiations for a treaty of alliance attempting to reconcile Egypt's demand for independence with Britain's four reservations are set forth with copious excerpts from documents. As Lloyd himself writes, "if I shall hardly be able to escape from imparting a more subjective flavor to my narrative, and adopting a more personal tone. . . . I can only hope that the disadvantage to science will be balanced by a heightened dramatic interest."

Dramatic also is the author's account of the forcing of his resignation in 1929 by Arthur Henderson and the Labor Government. The chapter is styled "Socialist Intervention."

The volume is of compelling interest. Not the least part of its value lies in the insight given into the workings of an honest Tory mind. Cromer's policy in Egypt wins the admiration of Lord Lloyd: it was clear-cut and comprehensible. As for "Cromerism," the author says, "I found, and still find, it impossible to understand what that curious phrase means."

HERBERT W. BRIGGS.

*Cornell University.*

*Curzon: The Last Phase, 1919-1925. A Study in Post-War Diplomacy.*

BY HAROLD NICOLSON. (Boston and New York: Houghton Mifflin Company. 1934. Pp. xvi, 416.)

Harold Nicolson, the son of Sir Arthur Nicolson, Lord Carnock, one of the principal officials in the British Foreign Office before and during the World War, himself served for many years in the Foreign Office and the foreign service. He has previously published a brilliant life of his father (1920), as an illustration of pre-war diplomacy, and a successful volume on the peace-making of 1919 (1933). The present volume completes a trilogy, with a study of post-war diplomacy from 1919 to 1925, centering around Lord Curzon, as foreign secretary, and concludes with an essay on the practice of diplomacy, comparing the merits and defects of professional and democratic diplomacy and foreign policy.

The opening chapter sketches briefly the earlier life of Curzon, with emphasis on the psychological and other factors which affected his character, faith, and temperament, and serve to explain in part the outcome of his tenure as foreign secretary. "Here was a man possessed of great intelligence, of flaming energy, of clear ideals, of unequalled knowledge, of wide experience; to this man was granted an opportunity such as falls seldom to any modern statesman; and yet, although in almost every event his judgment was correct and his vision enlightened, British policy under his guidance declines from the very summit of authority to a level of impotence such as, since the Restoration, it has seldom reached."

Other factors than Curzon's personality which affected the result are indicated throughout the book. For the first four years of his period in office, the control of foreign policy was in fact in the prime minister, and Curzon's advice was often overruled; while after he obtained the main direction, on the fall of the Coalition Government in 1922, the influence, authority, and international credit of Great Britain immediately revived, and Curzon personally gained a remarkable success at the conference of Lausanne in 1923. It is also suggested that the failure of post-war diplomacy may have been due largely to a general collapse of the national will in Great Britain, and that the transition from aristocratic to democratic diplomacy brought out the vices of both systems and the virtues of neither.

Most of the work deals with the problems of the Near East, in which Curzon was primarily interested: Smyrna, Persia, Egypt, Chanak, and the Lausanne Conference. There are chapters on diplomacy by conference, reparations, and "The Last Battle." In the terminal essay, after discussing the dangers and merits of democratic and professional control of diplomacy, the author supports the new tendency toward democratic control of foreign policy, but believes this should go along with professional conduct of diplomatic negotiations. He fails to recognize that dip-

lomatic negotiations may control the policy, although his own account of the Lausanne Conference shows how much Curzon's masterly conduct of procedure influenced the final outcome.

Based on intimate knowledge, and written in clear and forcible language, with occasional flashes of brilliance, the work presents a careful analysis of a series of complicated problems, and offers a substantial contribution to the larger problem of the relations between diplomacy and policy.

JOHN A. FAIRLIE.

*University of Illinois.*

*Essai sur le Travail Parlementaire et le Système des Commissions.* By JOSEPH-BARTHÉLEMY. (Paris: Librairie Delagrave. 1934. Pp. 373.) Vol. V of Bibliothèque de l'Institut International de Droit Public.

Every observer of practical politics, every person who is curious for any reason as to the actual operations of legislative bodies, and every teacher, research worker, or student in the field of comparative government will find much to interest him in Professor Joseph-Barthélemy's study of the committee system in the French Parliament. The career of the author as a member of Parliament and secretary of the Chamber of Deputies, as a professor of law, and as a delegate for several years to the League of Nations (to name but a few of its most striking features), has qualified him to write on this subject with both intimate knowledge and the critical detachment gained from opportunities to study and observe other ways of doing things besides the familiar ones.

The detailed nature of the book makes any synopsis of contents impossible. The author discusses not only such general subjects as the rôle of committees in the work of Parliament and the control exercised by committees, but such matters of fact as the way in which committees are recruited, the manner in which they are organized, and the length of term of their members. From this wealth of material, only a few outstanding ideas can be selected for mention here.

The author states that in the French parliamentary system, the committees compare in importance with the Government as directors of legislative debates. From the time of the Constituent Assembly to the present day, committees have played a useful part. On the other hand, they may encroach upon the prerogatives of the Chamber as a whole, and even more upon those of the executive, thus disturbing the balance of powers. At present, the Chamber of Deputies employs two kinds of so-called permanent committees: the grand committees which serve for one year, among which the entire membership of the Chamber is divided; and other committees which do not enjoy the title "grand," and which

serve for the period fixed by the resolution that creates them. Various special committees are established from time to time.

The discussions of the committees are secret, and no written record of them is kept. Such descriptions of committee meetings as appear in the official *Bulletin* or in the press are little more than colorless statements to the effect that an "exchange of views" took place between certain members. This does not apply, naturally, to the official report which is finally presented by a committee as a basis for parliamentary action. The report has a political significance, in that it is an expression of the attitude of the parliamentary majority, and if a bill for a law is in question, of the Government. Theoretically, bills may not be introduced by committees; but to all intents and purposes, they are so introduced.

A list of committees in the Chamber of Deputies (as of December, 1933) and in the Senate is given in a very brief chapter. Following this are special studies of those two powerful and important committees in both chambers, the committees on foreign affairs and the committees on finance. Emphasis is placed, of course, on the work of these committees in the Chamber of Deputies.

No formal conclusions are drawn. The last pages of the book are given, instead, to "some remarks," which present in the guise of epigrams the author's opinion that despite the imperfections of the committee system, the system itself is useful, and even indispensable, to the French parliamentary chambers.

The entire volume is spiced with wit and colored with apt and entertaining illustrations drawn from every period of history, including the present. The final word is the familiar admonition with which, like Cato's diatribe against Carthage, every volume on every phase of government might well be concluded: "No mechanism can replace what Montesquieu, in his antiquated style, called virtue. There is no charter which excuses men from being just and wise, and which makes them happy and peaceful despite their follies."

FREDERICK F. BLACHLY.

*Brookings Institution.*

*Le Contentieux Administratif des États Modernes.* By STRATIS ANDRÉADÈS.  
(Paris: Librairie du Recueil Sirey. 1934. Pp. ix, 587.)

The query has often been raised whether in such countries as England, the United States, and Belgium, which do not have special administrative courts, individual rights are as effectively protected as in France, where administrative tribunals check excesses or abuses of power. In an effort to answer this query for those interested in public administration, Dr. Andréadès presents a study of the essential statutory provisions and some of the administrative practices of the following countries: France,

Germany, Austria, Spain, Hungary, Italy, Switzerland, Czechoslovakia, Yugoslavia, Belgium, England, Rumania, and the United States.

The primary purpose of the author is to describe administrative law and procedure, and to deal with the external forms and rules of administrative action. A brief survey is presented for each country of the recourse for the protection of individual rights before administrative tribunals and the ordinary courts for excess or abuse of power. The classification of governmental systems throughout the study is as follows: the French system, with complete separation of administrative tribunals and ordinary courts and the establishment of an administrative hierarchy; the Belgian system, which aims to secure a separation of administrative and judicial functions, with controversies affecting public officers settled by the ordinary courts; and the Anglo-American system, in which administrative law is largely developed through the review of administrative action by the ordinary courts. In the judgment of Dr. Andréadès, the Rumanian administrative system has some features which make it different from any of the above classes. There is an attempt to establish and develop a system of administrative law similar to that of France, leaving, however, the determination of issues as to the excess or abuse of power to the ordinary courts.

The study centers primarily around the administrative courts of France, with the separation of administrative and ordinary courts. A rather superficial treatment is given of French administrative law, following the standard authorities on the subject, with an analysis of the kinds of recourse before administrative tribunals. Special consideration is given to the Council of State and the Tribunal of Conflicts through which a virtual supremacy is established in all matters pertaining to the scope of public law. The French administrative system is considered as furnishing a standard by which all other systems of administration may be evaluated. In the opinion of the author, it is in such a system alone that there is a true separation of powers.

Though an account is included of the German and Austrian administrative systems, the treatment is largely confined to administration as organized and sanctioned under the post-war constitutions which have recently been discarded.

In the consideration of administrative law in Anglo-American countries, Dr. Andréadès follows essentially, for the English system, the treatment of Professor Robson in his *Justice and Administrative Law*, noting the extent of delegated legislation as developed in England, with some of the consequent limitations upon judicial review.

As no single work covers the same ground in the United States, the author found difficulty in analyzing the remarkable development of administrative tribunals and the extensive scope of delegated legislation

in the United States. Primary emphasis is given in this section to government liability for torts. Some misleading impressions are given of the liability provided by statutes and by decisions in state and federal courts. Such outstanding features as the growth of the practice and procedure of industrial accident boards, public utility commissions, and of numerous other administrative boards and commissions seem to have escaped the author's attention. Confining the treatment almost exclusively to federal statutes and procedure gives also a very inadequate impression of the present tendencies in American administrative law.

One-fourth of the volume is devoted to a consideration of the development of the administrative law of Greece—a contribution which is noteworthy. In view of the fact that a separate administrative court has existed in Greece for only a few years, the analysis is necessarily confined largely to statutory and administrative rules and orders. The general result of the studies of the author appears to be a judgment to the effect that the only efficacious recourse for the review of administrative action is a system which provides separate administrative tribunals for the review of administrative action and a supreme administrative court.

From the viewpoint of statutory provisions and administrative rules and orders establishing systems of administration and providing for review of administrative action, the volume presents a useful survey of an important phase of modern public administration.

CHARLES GROVE HAINES.

*University of California at Los Angeles.*

*The Origins of the International Labor Organization.* EDITED BY JAMES T. SHOTWELL. (New York: Columbia University Press. 1934. 2 vols. Pp. xxx, 497, xii, 592.)

It is, no doubt, permissible for the gentlemen of Geneva and the Paris Peace Conference to write about themselves, as have in times past statesmen and political leaders who have stood, for a moment at least, on the spot where history is being made. Inevitably, however, there creeps into such writing the flavor of apology, though it may be defense of the record in the highest meaning of the term. The volumes here under review constitute in all respects the most significant publication available on the origins of Part XIII of the Treaty of Versailles and the International Labor Organization. It is intended to be, in all probability, a definitive work on the origins of the labor set-up of the League System. Whether it is such, time and further scholarship alone will reveal. But as a definitive work on the labor aspects of the Peace Conference, it is somewhat marred by the inclusion of a considerable body of splendid material on the conditions of labor and industrial philosophy in the United States.

While the second volume consists entirely of documentary material

of great value, the first consists primarily of a series of essays by the men who should know more than any others about the origins of the Organization. Among the contributors are H. B. Butler, the present director of the International Labor Office; Sir Malcolm Delevingne, who, with G. N. Barnes, led the defense of the British plan for the Labor Organization in the Peace Conference; Ernest Mahaim of Belgium, who, since late in the last century, has been a leading advocate of the international protection of workers; Edward J. Phelan, an assistant director of the Labor Office and one of the British delegation at the Paris Conference; and Professor Shotwell who, according to the evaluation of his contributors, did as much or more than Henry M. Robinson and Samuel Gompers, the American representatives on the Commission which drafted Part XIII, to effect the compromises which permitted a text to be agreed upon. Professor Samuel McCune Lindsay and others have made remarkable contributions to the work, but these were not active in the Peace Conference. Miss Carol Riegelman's discussion of war-time trade-union and socialist proposals is probably the best available.

A wealth of data is published for the first time in this work. This is because the material is drawn from the personal experience of such men as Butler, Phelan, and Delevingne. The work of Professor Shotwell in the Peace Conference is told by those who saw him in action at Paris in 1919. Mr. Phelan, sometimes regarded as the most astute and polished of all the League bureau-diplomats, has come to the conclusion that the time has now arrived to give his own account of what happened at Paris. This he does, as the heaviest contributor, with a degree of ingenuousness which may be surprising, to say the least, to those who have had personal experience with him in the International Labor Office.

The conclusion is hardly to be avoided that the work is directed in a large measure toward the American audience. This is indicated by the inclusion of documentary material on American labor problems (Vol. II, Pt. IV) and the essay by Professor Lindsay. But it is also demonstrated by the care with which is presented the case for the autonomy of the Labor Organization in relation to the League. This question has become one of the routine matters of discussion in League and Labor Office legal circles. The intentions of the framers of Part XIII, and of the Peace Conference, according to this work, were not made entirely clear, but the indications are that only an ineffective case can be made for a legally necessary identity of membership between these two institutions of the League System. The amendment of Sir Robert Borden of Canada is labored by the authors to show in effect that Sir Robert was interested only in the equal status of the Dominions with other members of the League and Labor Organization (Vol. I, pp. 210-11, 218-20), and not in providing that only members of the League may be members of the

Organization, as Article 387 of the Treaty might imply. The importance of this argument in the present discussion of the legal basis of American membership in the Organization is clear. In his eagerness to make this point, Professor Shotwell has perhaps over-stated the autonomy of the Organization in the procedure of amendment of the Treaty when he omits any reference to the essential rôle of the Council of the League. (Vol. I, p. xxv). Finally, of course, this issue of interpretation will be settled by international practice. But it is an issue which here has been attacked by the historical method rather than by the literal meaning of words.

In passing, it may be remarked that it is only human that the authors should lack a keenly critical attitude toward the work of the Peace Conference, for most of them were part of that historic diplomatic gathering.

FRANCIS G. WILSON.

*University of Washington.*

*Statelessness; With Special Reference to the United States.* By CATHERYN SECKLER-HUDSON. (Washington: Digest Press. 1934. Pp. xvii, 332.)

Philip Nolan, "the man without a country," at least retained his nationality. He was not, therefore, in the plight of the countless men and women throughout the world who, usually through no fault of their own and frequently without any voluntary action on their part, have found to their dismay that they are stateless—without nationality. Gauged by the almost entire absence of any scientific treatment of the subject, they were the "forgotten" men and women. Professor Seckler-Hudson, has entered the field and made a scholarly and outstanding contribution.

In this work, the author, after defining nationality and statelessness, describes in detail from the point of view of the United States three main categories into which stateless persons may be divided. These include some persons who may technically retain their nationality, but who are incapable of effectively exercising the rights and privileges pertaining to it. Because marriage is a prominent cause of statelessness in individual cases, the first group includes a description of those whose condition is a result of marriage. The second consists of adults whose status has arisen other than through marriage, while the third group relates to minors. Twenty-seven conditions which may cause statelessness are pointed out in the first group, thirty-five in the second, and twenty-four in the third—a total of eighty-six different conditions which may cause statelessness. At first thought, it might seem almost inconceivable that there should be so many situations capable of producing a loss of nationality or its absence, but the author's profuse references and annotations to municipal and foreign nationality laws, arbitrations, judicial decisions,

periodical and other literature, and illustrative incidents amply support her classification.

Professor Seckler-Hudson concludes with some suggestions for a new nationality system of the United States, formulated with a view to eliminating the principal conditions which cause or perpetuate statelessness. They include the following: (1) provision of United States citizenship for the wife of an American citizen if she would otherwise be stateless, and citizenship for former American women who lost citizenship through marriage; (2) elimination of mere absence from the country as a cause of statelessness; (3) elimination of the effects of statelessness for residents without nationality; (4) abolition of complete denationalization by governmental action; (5) adjustment of our deportation system so as to prevent injustices of statelessness from falling upon helpless individuals; (6) extension of citizenship to illegitimate children of American parents; (7) adoption of the principle that a child should not suffer loss of nationality because of any act of the parent; (8) extension of United States citizenship to the foreign-born children of American fathers where the latter never resided in the United States, if the children would otherwise be stateless; and (9) provision of citizenship for foundlings. Whether these recommendations shall be adopted is, of course, a matter for legislative consideration. It is possible that a clarification of the situation may result from the work of the Committee on Nationality consisting of the Secretary of State, the Attorney-General, and the Secretary of Labor, appointed by President Roosevelt on April 25, 1933, to review the nationality laws of the United States, to recommend revisions, and to codify those laws into one comprehensive nationality law for submission to the Congress.

The format and typography of this work are especially pleasing, the appendices of laws, rules, and other pertinent material helpful, the bibliography comprehensive, and the index satisfactory. It is a worthy initial number of the American University Studies in International Law and Relations, published under the direction of an editorial board of which Ellery C. Stowell is chairman. As stated by Dr. James Brown Scott in the introduction, this study in nationality and conflict of laws is indispensable to teachers of international law, to officials charged with its administration, and to the foreign officers of each and every civilized country, and is especially indispensable in the United States. Teachers of political science will find it of particular interest.

*Washington, D.C.*

HENRY B. HAZARD.

*Post-War France.* BY PAUL VAUCHER. (London: Thornton Butterworth, Ltd. 1934. Pp. 256.)

Those students of government who find, as many do, that a peculiar fascination attaches to acquaintance with French practical politics will

welcome the addition during the present year of Professor Vaucher's little volume to the Home University Library. The contents of the book are divided almost exactly to the page into two equal parts treating respectively of the domestic and foreign affairs of contemporary France. This division doubtless corresponds in a general way to the special interests of the author, who is professor of modern French history and institutions in the University of London. However, the emphasis of the little book is in a sense on history rather than institutions. The primary object of the volume is stated to be that of defining "the part played by France in international affairs after the War." Institutions and domestic problems being treated with a definite view to their bearing on diplomacy, inclusion and exclusion of matters of internal politics become peculiarly a question of individual choice. At the same time, some will regret the omission of things like the problem of Alsace-Lorraine and the post-war relations of the government and the Vatican.

The first half of Professor Vaucher's volume, which treats of domestic affairs, consists of three chapters. The first, which is entitled "Political Institutions," passes in review such aspects of the French governmental system as governing classes and parties, the legislative process, the electoral system, ministerial responsibility, and the administrative system. A second chapter is an essay on French political parties. To the uninitiated it should serve as an enlightening introduction and to the initiated as a reminder of the infinite variety and interest of the play of public opinion and political activities in France. The third chapter, entitled "Economic Policy," is not unnaturally devoted in large measure to finance. Well buttressed with figures, it is an especially solid chapter.

Four chapters which compose that half of the book dealing with foreign affairs present a more or less conventional account, from the French point of view, of current events in Europe since the War. Beginning with the reparation problem, the account proceeds through the stages of Locarno and "Briand's last effort" to the existing world crisis. A chronological table serves as an introduction to the small volume, and a sympathetic appraisal of French attitudes during thirteen momentous years as a conclusion.

R. K. GOOCH.

*University of Virginia.*

#### BRIEFER NOTICES

##### AMERICAN GOVERNMENT—NATIONAL, STATE, AND LOCAL

In *The Law of Citizenship in the United States* (University of Chicago Press, pp. 221), Dr. Luella Gettys has performed an invaluable service in presenting, for the first time since the publication of Van Dyne's

treatises early in the century, an adequate survey of American legislation dealing with the acquisition, retention, and loss of nationality. She has aimed "to bring to date in systematized form the statutes, decisions of courts and international claims commissions, and departmental opinions, rules, and regulations" dealing with American citizenship. Quincy Wright characterizes the result accurately in his Foreword: "The book is unquestionably the most comprehensive treatment which has appeared on the subject." The volume takes up in turn, with complete documentation, the general principles of American citizenship, its acquisition *jus soli* and *jus sanguinis*, individual naturalization, status as affected by marriage, and collective naturalization. An "addendum" summarizes the terms of the act of May 24, 1934. Not least among the merits of the volume are its excellent organization, its readable style, and its numerous (and at times highly entertaining) excerpts from important judicial decisions. There is an extended bibliography and a list of leading cases. The major recommendations in the concluding chapter should provoke fruitful discussion: that Congress should make individual merit, regardless of race, the test of fitness for naturalization; that pacifists who, in the phrase of Justice Holmes, "believe more than some of us do in the teachings of the Sermon on the Mount," should not be barred from citizenship by the federal courts; that dual nationality should be prevented by international agreement; that further efforts to secure uniformity of nationality laws by multilateral conventions should be initiated; and that the United States, in the interest of clarity and consistency of practice, should adopt a comprehensive code of citizenship laws. Attention might well have been given in the volume to administrative practices in the execution of existing legislation, and perhaps to the psychology and sociology of citizenship. But within its limits as a study in public law, the work is excellent and deserves a wide market.—

FREDERICK L. SCHUMAN.

*National Taxation of State Instrumentalities* (pp. 10), by Alden L. Powell is one of four pamphlet studies of recent appearance, bearing a common imprint (Urbana, Ill.). Powell's study is an historical and analytical inquiry into the immunity of state agencies from national taxation. The history of the doctrine is traced, with particular emphasis upon judicial decisions and administrative rulings which have limited the scope of its application. Under the title of *Judicial Administration in Mississippi* (pp. 13), Pressly S. Sikes makes a critical analysis of the organization and functioning of the court system of Mississippi. Comprehensive suggestions are made for the reorganization and simplification of the judicial system. A state judicial council is recommended. In *Financial Administration in the States of Illinois, Ohio, and Indiana* (pp. 24),

Max M. Sappenfield makes a comparative and critical survey of the custody and expenditure of public moneys in three states. Custody of funds, preparation of the budget, control of expenditures, and auditing are treated in some detail. Revenue systems are not considered. *Local Government and Administration in Louisiana* (pp. 15), by Roderick L. Carleton, is a study of parishes and municipalities in Louisiana. Present local organization is criticized as based upon population and area rather than upon functions and services. Suggested improvements include a higher degree of state supervision of local affairs, particularly in the field of finance, and the establishment of responsible executive authorities in local government. A state constitutional convention is recommended as the only practicable means of bringing about necessary changes.—CLYDE F. SNIDER.

*Forty-Two Years in the White House* (Houghton Mifflin, pp. xii, 332), by Irwin Hood ("Ike") Hoover, is, we are assured by the publishers, precisely such a book as Samuel Pepys might have written had he been chief usher to ten presidents of the United States. This may or may not be true, but there is no doubt that Mr. Hoover's racy account of his observations and experiences in the Executive Mansion through four decades is an entertaining and intriguing book. Nowhere else are the presidents, their families, and their friends so fully and frankly portrayed as human beings; and while a great part of what is recorded is merely harmless and not particularly significant gossip, there are plenty of touches which throw considerable light on the politics and administrative policies of the period. Planning to retire in 1935, Mr. Hoover had completed his story through the Taft administration at the time of his death. His isolated chapters and rough notes dealing with the more recent years were put into shape by other hands.

*Documents of American History* (F. S. Crofts and Co., pp. xxi, 450, 454), edited by Henry Steele Commager, is the most ambitious attempt thus far made to bring together between the covers of a single book (the two volumes are bound in one) the fundamental written sources of American history from the age of discovery to the present. Nearly five hundred selections are presented, starting with the privileges and prerogatives granted to Columbus by the Spanish sovereigns in 1492 and closing with the anti-war treaty of non-aggression and conciliation of June 15, 1934; almost one hundred, indeed, are drawn from the period since 1914. Brief introductory notes are supplied by the editor; also selected bibliographies; and the use of a large double-column page offsets the unavoidable disadvantages of rather small type. One may concur in the prediction of President Dixon Ryan Fox, in an editorial foreword to the book, that

"Commager's *Documents* will be cited everywhere as a convenient form in which most basic sources of our political history may be consulted."

The *Political Paradox* about which Harry Frease, past president of the American Patent Law Association, writes in this book (Winston Co., pp. xiv, 258) seems to be the sight of our "Jeffersonian" Mr. Roosevelt doing the most "Hamiltonian" things. A paradox even more ingenious is that of the author in elucidating the convenience and necessity of great political measures from cases decided by the Supreme Court. For example: the N.R.A. is an unconstitutional use of the power of Congress over commerce; therefore such regulation of business is not statesmanship. Again: federal regulation of stock exchanges is almost certainly constitutional, therefore it is the only way out of the depression, or, as Mr. Frease has it, the "revulsion."

In 1933 the faculty of the University of Chattanooga began a program of studies on the government of Hamilton county. Hindered for a time by lack of funds, the work was continued with C.W.A. aid, and the results are now being published. University of Chattanooga Bulletin, Social Science Studies, Vol. I, No. 1, July, 1934, the first in a series of bulletins, contains three studies: "Government and Finances of Hamilton County," by Frank W. Prescott; "Property Tax in Tennessee with Special Reference to Tax Delinquency," by T. Levron Howard; and "A Comparative Study of Chattanooga and Hamilton County Teaching Staffs," by Paul L. Palmer. The studies deal competently with their subject-matter, and are in each case accompanied by numerous charts and tables. The first two present recommendations for legislation.

The American Library Association has issued a mimeographed *Guide to the Official Publications of the New Deal Administrations* (pp. 113), compiled by Jerome K. Wilcox, associate reference librarian of the John Crerar Library, Chicago. Some seventy pages comprise a check-list of the mimeographed and printed official publications of all the emergency administrations from March, 1933, to April 15, 1934, and one of the two appendices presents a partial list of state C.W.A. publications of the same period. Practically all of the materials listed are on file at the John Crerar Library, and are available for inter-library loans.

#### FOREIGN AND COMPARATIVE GOVERNMENT

In *The Maritimes and Canada Before Confederation* (Oxford University Press, pp. xi, 328), William M. Whitelaw gives a detailed and painstaking historical study of the attempts to form a political or economic union of the three separate colonies of New Brunswick, Nova Scotia, and Prince Edward Island from their inception in the eighteen-twenties to their

failure in the 'sixties. He also traces the attitude of these colonies and of Canada toward the simultaneous proposals for a federation of all the British colonies, and the policy of the Colonial Office toward both projects. The ultimate failure of the lesser and the long postponement of the wider scheme were caused by the lack of common interests and the strength of provincialism. Advocacy of either plan was confined to a small number of politicians, editors, and business-men who hoped to benefit from it. The majority of the population were apathetic or indifferent, and few even of the politicians who really believed in either proposal were willing to run any political risks in its advocacy. The maritime colonies were geographically remote from Canada and lacked railway communications with it and with one another; they prided themselves on greater loyalty to the Empire and on better racial stock; and their trade was principally with the United States or with Europe. Intercolonial trade was small, since the products of the colonies were competitive rather than complementary. Canada was interested in Western expansion, and owing to its railway communications with American ports was not vitally concerned with the construction of an intercolonial railway save as a means for facilitating its defense against the United States. This last point made no appeal to Nova Scotia and Prince Edward Island, since they relied for defense upon the British fleet. As regards a unitary government for the three maritime colonies, Nova Scotia and New Brunswick periodically discussed the idea, but each feared a diminution of its political importance. Local jealousies would also have required the building of a new capital, which would have necessitated railway construction beyond the resources of the colonies to make it accessible. Prince Edward Island consistently opposed all proposals for unification, since owing to its tiny area and population this would have meant virtual political extinction. In 1864, proposals for a Maritime union and a Dominion confederation came to a head simultaneously; but the continued opposition of Prince Edward Island finally defeated the former plan. The maritime colonies then agreed to a federation with Canada, since it would preserve part of their local identity, while they also hoped that the construction of the intercolonial railway which formed part of the scheme would augment their economic prosperity. Canada initiated these final, successful proposals to escape from the governmental deadlock produced by the unification of Quebec and Ontario, to provide an alternative route to the Atlantic, and to strengthen its powers of defense. The growing tension in American-Canadian relations during the Civil War explained these last two reasons.—LENNOX A. MILLS.

Dr. Herman Finer's *The Theory and Practice of Modern Government*, first published in 1932, has now been condensed into a single-volume

edition with the same title, revised by William B. Guthrie with a foreword by Howard Lee McBain (The Dial Press, pp. xv, 918). Professor Guthrie has been able to present Finer's study in a single volume by the omission of much of the theoretical material (e.g., some seventy pages of preliminary discussion on the state, a chapter on federalism, and one on parliamentary reform), and by the omission of much of the material on American government and several chapters on the civil service. The loss of the excellent chapter on federalism and of those on the civil service is unfortunate, but necessary and legitimate in a revision designed as a text for the study of comparative government. Dr. Finer concentrated his attention upon the delicate mechanism of popular government, particularly as it operates in England, the United States, France, and Germany. The present edition is confined to the same limits and takes no account of shocks which popular government has sustained since 1932. Professor Guthrie has retained Finer's very useful bibliographical footnotes, and, while occasionally rephrasing for the sake of summary, has lost nothing of Finer's forceful style.—JOHN D. LEWIS.

The political revolutions which the theories of the nineteenth century exclusively envisaged were from the "left" and attempted to set up the perfect and perennial form of representative government. The German National Socialist revolution of 1933 came from precisely the opposite direction, the "right," and is typical of an upheaval in which the state is raised to the central position of authority and power and in which it attempts to eliminate social distinctions among sections, factions, castes, and classes. With this fundamental background in mind, Dr. W. R. Dittmar proceeds to examine, analyze, and discuss *The Government of the Free State of Bavaria* (Bayard Press, pp. 161) as organized by the fathers of the Bavarian republican system of 1818 and then compares it with the plan of government for the period 1919-33 in which not only the three main branches of the general government, but also the counties and rural and municipal communes, are described. Stated briefly, we have here a very good constitutional and functional study of one of the most important states of Germany, concerning which very little has hitherto appeared in English. It is written from a thoroughly objective point of view, is well documented, and contains at the end a very complete bibliography of works bearing upon the constitutional and political systems and concepts through which Bavaria passed from the "free state" of 1818 to the present time.—KARL F. GEISER.

The exceedingly useful booklet entitled *The Hitler Decrees*, compiled by James K. Pollock and Harlow J. Heneman, has been issued in a second edition (Ann Arbor, George Wahr, pp. 86). Opportunity has been seized

to bring the collection up to date, to eliminate provisions which have been superseded, and to rearrange the selections in accordance with the later development of affairs. As in the first edition, the documents presented deal principally with the structure of the new governmental régime, omitting economic, social, and religious measures. At the present stage, this basis of selection is entirely justifiable, but the hope may be expressed that the editors will in time find it possible to make texts of the latter character equally accessible to American students.

#### INTERNATIONAL LAW AND RELATIONS

Although Count Stephen Bethlen's *The Treaty of Trianon and European Peace* (Longmans, Green and Co., pp. xiii, 187) is a very able presentation of the Hungarian case against the post-war arrangements of Central Europe, it must be judged by its fire and not by its billowing smoke. The work is composed of lectures, delivered in England last year by the former prime minister of Hungary and dealing with Hungarian history and the race question, the treaty of Trianon and the Danubian nations, the problem of Transylvania, and the treaty of Trianon and European peace. While the author reveals enough on the debit side of the ledger to create an impression of fairness, he omits as much that may reasonably be set up against his conclusions. The author, for example, claims that no responsible Hungarian statesman ever wanted to "denationalize by forcible means the foreign elements within" Hungary. Quite opposite statements to that effect were made by Koloman Tisza in 1875, Baron Stephen Tisza on January 16, 1905, Prime Minister Koloman Szél on June 21, 1908, and Baron Apponyi on April 13, 1907. Or we learn that "in political matters there was all through the ups and downs of Hungarian history scarcely ever any antagonism between [the Slovaks] and the Hungarians." But Bethlen fails to remember that in 1906 a number of their deputies (Juriga, Hodža, Petrovič and others) were sentenced to long terms in jail for their political activities. Or we learn that in the World War the Slovaks "never even for one minute negotiated with the enemy, and not one of them ever deserted the ranks and ran away as did the Czechs." Bethlen must surely have heard about General Stefanik and his followers. All in all, Bethlen's presentation is at best a pretty piece of theorizing, of arguing from major premises and complacently ignoring the minor facts that often change the entire aspect of the argument. This indicates that the discerning reader would do well to regard the book as an exhibit of Hungarian viewpoints, rather than as an authoritative source of light on Central Europe.—JOSEPH S. ROUCEK.

In his *Documentary Textbook on International Relations* (Suttonhouse, pp. xxvii, 848), Professor John Eugene Harley has given us a very useful

book. It should be on the desk of every student of international affairs. As Professor C. E. Martin says in his introduction to the book, the author has "in the selection of materials and subjects included all that is necessary to secure an adequate understanding of international relations in world peace both in their larger relations and also in their detailed aspects." Part One (pp. 1-314) contains material relating to international organization and coöperation and includes much concerning the League, the Court, the International Labor Organization, the Pan American Union, and other official international organizations. Special attention is given to the position of the United States in each case. Part Two (pp. 317-516) is concerned with the pacific settlement of international disputes and presents many types of arbitrations and conciliation treaties. Special attention is here given to the Geneva Protocol and the Locarno treaties. Part Three (pp. 517-594) deals with the renunciation of war. It contains twenty-six documents concerning the Pact of Paris and its application, and also the London Convention Defining Aggression and the South American Anti-War Treaty. Part Four (pp. 597-800) has three chapters concerning limitation and reduction of armaments, ending with the recent messages of President Roosevelt. In Part Five (pp. 803-840), there are eleven selected bibliographies and one of a general nature. Any-one may disagree with Professor Harley's arrangement and emphasis, but his selections are enough to make the book a necessity. There are ample citations; and the author gives summaries and a connecting and explanatory discussion in many cases where quotation is impossible.—

CLYDE EAGLETON.

The fifth biennial conference of the Institute of Pacific Relations, held at Banff, Canada, August 14-26, 1933, and the first to take place on the American continent, was devoted to the general subject of economic conflict and control in the Pacific area. Under the editorship of Bruno Lasker and W. L. Holland, the proceedings are published in *Problems of The Pacific, 1933* (University of Chicago Press, pp. xvi, 490). Among topics considered in round tables and here reported on at length are: shipping in the Pacific, instability of currency, differences in standards of living, differences in labor standards, Japanese expansion, China's reconstruction program, economic conflict and public opinion, and the United States recovery program. In addition, about half of the book is taken up with special studies on still other subjects, among which one notes particularly a discussion of rural industries in China, by H. D. Fong; a survey of Chinese government economic planning and reconstruction, by Gideon Chen; and a plan for a security pact for the Pacific area, by Yasaka Takaki and Kisaburo Yokota. Students of Far Eastern and Pacific affairs have learned to rate the biennially published proceedings of

the Institute as among the most valuable current contributions to the fast-growing literature of their subject.

*Merchants of Death* (Dodd, Mead and Co., pp. viii, 308), by H. C. Engelbrecht and F. C. Hanighen, deals with the activities of the international armaments industry, and summarizes the more accessible literature with competence and objectivity. The underlying point of view is consistent with that of the senior author, who was an associate editor of *The World Tomorrow* until that periodical merged with another. Some happy discoveries are reported in the study, of which the most noteworthy is the catalogue of Francis Bannerman and Sons of New York City, a concern dating back to 1865, which is said to be the largest second-hand dealer in armaments. The authors believe that one of the operations of this house was as follows: the Spaniards in Cuba were equipped with German Mauser rifles which were sold at auction after the Spanish-American War, principally to Bannerman's, who appear to have sold them to the Panamanians, who used them to secede from Colombia. The first two chapters of the book are introductory. Chapter III takes up the story of the Du Ponts, the first of whom was able to benefit from his acquaintance with Thomas Jefferson. Chapters IV–XI inclusive carry the history of the armament interests to the World War. Chapters XIV–XVIII tell of the post-war world and recommendations for incessant vigilance in the hope of peace.—HAROLD D. LASSWELL.

*The Interpretation by the Supreme Court of the United States of Certain Phases of International Law* (Urbana, Ill., pp. 15), by James J. Lenoir, is a study of certain groups of cases decided by the Supreme Court for the purpose of ascertaining the extent to which that court has contributed to the law of nations. An investigation of five selected topics leads to the conclusion that the Supreme Court has contributed to the law of nations by two processes: by approving principles formulated by publicists and thus hastening their crystallization into rules of law; and by formulating, through its interpretations, new principles which through later recognition by other nations may come to be accepted as rules of law.—CLYDE F. SNIDER.

A paper entitled *International Law and German Legislation on Political Crime* (London: The Eastern Press, Ltd., pp. 21), read by Lawrence Preuss before the Grotius Society in June, 1934, discusses the different ways in which present German legislation as to treason might be applied to non-Germans for acts committed outside of Germany. The author demonstrates that, as the laws stand, there is nothing to prevent their being given such effect, and thinks that the only reason why they have

not been so applied is the fear of the Nazi authorities that reprisals would be visited upon German nationals living abroad.

Jacob Robinson, a lawyer in Kaunas, is the author of a magisterial study of the Memel Convention entitled *Kommentar der Konvention über das Memelgebiet* (Verlag Spaudos Fondas, Kaunas, 2 vols., pp. 910 and 742). The first volume is devoted to a resumé of the early history of the Convention, followed by a comprehensive analysis, article by article, of the document itself. The second volume provides the texts of all the laws, treaties, court decisions, etc., which are in any way pertinent. The bibliography is exhaustive.

#### POLITICAL THEORY AND MISCELLANEOUS

The eleventh, twelfth, and thirteenth volumes of *The Encyclopaedia of the Social Sciences*, edited by Professors Edwin R. A. Seligman and Alvin Johnson (Macmillan Co., pp. xxi, 639; xxi, 716; xxii, 674), have appeared, thus bringing this invaluable work along alphabetically to articles dealing with such subjects as separation of powers and serfdom. As in the preceding volumes, each article is followed by carefully selected bibliography. Limitation of space permits a brief mention of only a few of the leading articles, all of which measure up to the same high standard as has already been set by the earlier volumes. Of especial interest to students of political science are such articles as those on city government under the headings of municipal corporations, courts, finance, government, and transit, by such authorities as Charles W. Tooke, William B. Munro, A. E. Buck, and Paul Blanchard; the article on "Nationalism" by Max H. Boehm, who deals with the theoretical aspects of the subject, and Carlton J. H. Hayes, who treats the topic historically; "Administrative Organization" by Herman Finer; "The Press" by Dexter M. Keezer; "The Philippine Problem" by Roy Veatch, who states that the complexity of the problem may force one to the conclusion "that it never will be permanently solved until the Filipino people become an independent nation able to work out their own destiny in a world which will not require them to appeal to arms either for the achievement or for the maintenance of their independence"; "Prohibition" by Clark Warburton; "Public Finance" by Edwin R. A. Seligman; "Public Opinion" by Wilhelm Bauer; "Rate Regulation" by Felix Frankfurter and Henry M. Hart, Jr., in which the opinion is expressed that the "difficulties inherent in the methods imposed by the judiciary upon administrative agencies have been intensified by the quality of their personnel," that "almost everywhere the commissions have been inadequately staffed, overburdened by detail, denied necessary technical aid, dependent on meagre salaries, and without security of tenure," and that "in the main

the public interest has suffered from too many mediocre lawyers appointed for political considerations, looking to the public service commission not as a means for solving difficult problems of government but as a step toward political advancement or more profitable future association with the utilities"; "Regionalism" by Hedwig Hintze, which is chiefly a discussion of the movement in France and Spain; and "Representation" by F. W. Coker and Carlton C. Rodee, in which the observation is made that "political scientists have yet to find the solution for the difficulties in the way of organizing good representation." Carl Brinkmann and John Bauer have contributed an article of thirteen pages on "Public Utilities," which is divided into three parts dealing with the subject in general and also with the growth and extent of utilities and their problems in the United States and Canada and in Europe. The subject of "Political Parties" is dealt with in a long section of fifty pages by a group of writers including, among others, Arthur N. Holcombe, Harold F. Gosnell, Arthur W. Macmahon, W. A. Rudlin, Lindsay Rogers, W. E. Rappard, Malbone W. Graham, William Spence Robertson, and Harold S. Quigley. This section of the *Encyclopaedia* includes a discussion of the theory of parties by Professor Holcombe, an explanation of their general organization by Harold Gosnell, and a description of the party system and problems in each of the important countries. Professor Holcombe is inclined to the view that the two-party system, although "a convenient system for contented people," is "not an efficient system for the expression of public opinion when the variety of opinion and intensity of conviction are great." This entire section is a most valuable symposium on a subject of vital importance and interest. Another article of more than usual length (seventeen pp.) and significance is that on "Political Science" by Hermann Heller. Treating the subject under the topics of content and method, history, and function, the writer states that "political science can be said to have a function only if it be assumed that it is capable of providing a correct and authentic description, explanation, and criterion of political phenomena." In his opinion, a serious danger has been introduced, in the twentieth century especially, under the influence of the philosophy of Nietzsche and Bergson through "the radical relativization of thought in terms of 'life,'" and also through the ideas of such writers as Sorel and Pareto, according to whom "every pronouncement of political science is merely the sublimation of a highly individualized, thoroughly irrational, life situation." If such interpretations are correct, Mr. Heller fears that "political science has completed its own self-destruction and has finally done away with itself as a science." It is his opinion that "in order to reendow its pronouncements with a universally binding authority, political science must succeed once again in isolating from the flux of historical and social evolution an unequivocal set of fixed con-

stants," among the most significant of which is the nature of man. "Accordingly, political science, like all historical, sociological thought, must take as its starting point human behavior." That is why "it happens that the theoretical formulations of an Aristotle, a Hobbes, or a Marx still carry weight with present-day thinkers in the most varied political situations."—A. C. HANFORD.

Lewis Mumford's *Technics and Civilization* (Harcourt, Brace and Company, pp. xi, 495) warrants the attention of the student of political institutions and social theory both because of the scope of his treatment of the subject and because of the nature of the analysis presented. In his presentation of the rôle of the machine in modern culture, the author ranges widely and presents suggestive and stimulating interpretations. He is in agreement with the view, brilliantly demonstrated in the recent study of the British coal industry by John Nef, that the origins of a machine industry are to be found in a more remote past than has been appreciated. It is significant that the author in this connection stresses the importance of the mediaeval period, for it is here that the modern state also began to take form. There is a failure to recognize this, which leaves his analysis incomplete, and thus renders his concluding proposals thinner than they otherwise might be. This failure, however, is in part the fault of political scientists who have not yet explored sufficiently and interpreted to the general public the formation of the modern state around the administrative services that grew out of the king's household and the Italian city states. It is arguable that a modern machine society could not have come into existence without the provision by these early administrative services of the necessary conditions. Mumford indeed recognizes the part played by the rise of the national armies. Dorn's recent articles, the writings of Tout and Viollet, and Lybyer's study of Turkish administration under Muhamad the Conqueror are all parts of an interpretation which should increasingly correct the over-emphasis on parliamentary and judicial development which has hitherto existed, and which dwells supreme today in the mind of lawyer and journalist. When we understand how important a part organization and administration have played in the development of modern society and in making possible interdependent markets and large-scale production, their essential rôle in the society envisaged by Mumford as the proper fulfillment of the machine will be clearer. Administration will then be a central part of any adequate social theory instead of an afterthought. *Technics and Civilization* should be excellent supplementary reading in the study of modern political theory despite the relative absence of adequate mention of the contribution of political institutions concretely through administration to the increasing use of the machine.—JOHN M. GAUS.

The rapid multiplication of courses on public opinion given in departments of political science, sociology, or journalism amply justifies the appearance of Harwood L. Childs, *A Reference Guide to the Study of Public Opinion* (Princeton University Press, pp. vi, 105). Professor Childs is experimenting with his course at Princeton, and the brief syllabus here printed should prove helpful to many other teachers. He begins by drawing attention to the importance of public opinion in politics, and then passes to a brief discussion of "leaders and managers" of opinion. Gradually the topics become more impersonal and abstract, until at the end the student is reading about the application of rigid definitions and methods of measurement to the field. Each topic is introduced with brief paragraphs of explanation. Professor Childs is well versed in the literature and has developed a sound sense of reality through his research on economic promotional groups in this country and in Germany. His style is direct and clear, and there is every evidence that he has a pedagogical, though an unpedantic, conscience. The criticism which Professor Childs receives of his conception of the field and of the needs of undergraduates ought to benefit the inevitable textbook which will some day emerge—a consummation which in this case can be anticipated with far less abhorrence than usual. I see no good reason for the exclusion of foreign references. I doubt if Princeton students are as parochial as this implies.—  
HAROLD D. LASSWELL.

Mr. Lionel Curtis believes, above all else, that "to engender in men a desire to serve each other is the end and object of human existence." And this, suitably reworded, affords the "guiding principle in public affairs" which his publishers, perhaps intimate to his thoughts, surmised it was his aim to discover in his *Civitas Dei* (Macmillan, pp. xxiii, 297). But, of course, no amount of history will ever yield either directly or by inference any such ethical ultimate. What does apparently ground the principle—apart from its antecedent existence in the author's mind—is the authority of Jesus, "the greatest thinker of all time." At any rate, Mr. Curtis makes it his chief care to demonstrate that the earthly brotherhood of man was Jesus' essential message, distorted though it was by his followers and interpreters, hopelessly infected with the epidemic supernaturalism. A second major task is to elucidate his duty-principle by the reading of history, from earliest times down to the English Commonwealth, which, to Mr. Curtis' English eyes, shows the principle in practice. If philosophy be defined as "seeing thoughts through," this is not good philosophy of history; yet it is attractive stylistically, satisfies in its insights, and is good history.—L. MANOCK PAPE.

*Reaction and Revolution, 1814-1832* (Harper and Brothers, pp. xii, 317), by Fredrick B. Artz, is a volume in the new coöperative history, "The Rise of Modern Europe," edited by Professor William L. Langer of Harvard. This series, according to the preface, has "the current broad conception of the scope of history, . . . to go beyond a merely political-military narrative." The volume under review essays this task for the period 1815-32. The author has spent many years in study of the period and has already published *France Under the Bourbon Restoration*. In the present work he has interesting chapters on the throne and the altar, the middle class and the peasants, the search for a principle of authority, the creeds of Liberalism, the first years of peace, 1815-1820, the crisis of 1820, the rise of a new generation, the disintegration of the restoration, 1820-1830, and the revolutionary movements of 1830. These chapters are followed by a selected bibliography of thirteen pages, forty-eight illustrations, and an index of nine pages. Faced with difficult problems, of selection and emphasis, the author has made a new and interesting synthesis of familiar materials and has carried out the aims of the series in a highly creditable manner.—C. P. HIGBY.

Students of taxation and tax administration do not need to be told of the usefulness of *Federal and State Tax Systems*, published for some years by the Tax Research Foundation. Broadened in scope and otherwise improved, the publication now appears as *Tax Systems of the World* (pp. 282), prepared under the direction of the New York State Tax Commission and issued for the Tax Research Foundation by the Commerce Clearing House, Inc., of Chicago. The volume contains detailed analytical tax charts and tables for the United States, for all of the forty-eight states, and for most other countries of the world; and the bewildering mass of data is so complete and so carefully presented that with this volume at his elbow the student of the subject will find his labors, on the purely factual side, reduced to a minimum. An editorial foreword by Miss Mayme S. Howard indicates that, by developing a yet more effective plan of collaboration on the part of contributors throughout the world, the publication, as issued from year to year, is expected to attain still greater completeness and indispensability.

The third edition of *Principles and Problems of Government*, by Charles G. Haines and Bertha M. Haines (Harper and Brothers, pp. x, 642), is a thorough revision of this standard introductory text. A considerable amount of additional material on such timely topics as government and industry, social legislation, public utilities, administrative justice, and Fascism reflects a significant interest in recent problems of political organization and action. Included in this additional material is a concise

summary of the Roosevelt recovery program. A rearrangement of the subjects discussed also tends to emphasize the social-economic *milieu* to which contemporary government must be adjusted. Some sections from the older editions, such as that on law, have been expanded and considerably improved. Bibliographies are well selected for introductory study.—JOHN D. LEWIS.

Although competent studies of disaffection in the Southern Confederacy have been made, it has remained for Miss Georgia Lee Tatum in *Disloyalty in the Confederacy* (University of North Carolina Press, pp. ix, 176) to compile the fragmentary records of the secret "peace societies" among the Confederate "disloyal." Three such societies, each with its passwords, grips, and mystic symbols, located respectively in Arkansas, the middle South, and the Carolina up-country, are treated. Members of the societies were mostly from the lower economic classes, driven into secret plotting by the hardships of war or the Confederacy's conscription, impressment, and tax laws. The book offers a convenient summary of the extant official records and the few essays which have been written on the subject, but the author has neglected the wealth of material to be found in the personal narratives of Southern unionists, refugees, and prisoners. The work of the societies in encouraging desertion is mentioned, but their more significant function of aiding refugees, fugitive slaves, and escaping prisoners is hardly suggested.—W. B. HESSELTINE.

Under the general and none too accurate title, *Education and Government* (pp. 210), the Yale University Press has recently published a collection of essays and addresses by the late President Arthur T. Hadley, of that institution. The essays, nearly all of which have been printed elsewhere, deal with such miscellaneous topics as "Principles and Methods of Rate Regulation," "The Meaning of Valuation," "What is Education?," etc. Of some interest to the political scientist is the discussion of "Law Making and Law Enforcement," reprinted from *Harper's*.

RECENT PUBLICATIONS OF POLITICAL INTEREST  
BOOKS AND PERIODICALS

CHARLES S. HYNEMAN

*University of Illinois*

AMERICAN GOVERNMENT AND PUBLIC LAW

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